



The Legal Profession Reform Index

For

Kosovo

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Table of Contents

INTRODUCTION	1
KOSOVO BACKGROUND	1
SUMMARY FINDINGS.....	7
TABLE OF FACTOR CORRELATIONS.....	8
I. PROFESSIONAL FREEDOMS AND GUARANTEES	9
Factor 1: Ability to Practice Law Freely	9
Factor 2: Professional Immunity.....	10
Factor 3: Access to Clients.....	11
Factor 4: Lawyer-Client Confidentiality	13
Factor 5: Equality of Arms	14
Factor 6: Right of Audience.....	17
II. EDUCATION, TRAINING, AND ADMISSION TO THE PROFESSION	18
Factor 7: Academic Requirements	18
Factor 8: Preparation to Practice Law	20
Factor 9: Qualification Process	22
Factor 10: Licensing Body.....	25
Factor 11: Non-discriminatory Admission	26
III. CONDITIONS AND STANDARDS OF PRACTICE.....	27
Factor 12: Formation of Independent Law Practice	27
Factor 13: Resources and Remuneration	28
Factor 14: Continuing Legal Education	29
Factor 15: Minority and Gender Representation.....	30
Factor 16: Professional Ethics and Conduct.....	32
Factor 17: Disciplinary Proceedings and Sanctions.....	34
IV. LEGAL SERVICES.....	36
Factor 18: Availability of Legal Services	36
Factor 19: Legal Services for the Disadvantaged	37
Factor 20: Alternative Dispute Resolution.....	39
V. PROFESSIONAL ASSOCIATIONS	40
Factor 21: Organizational Governance and Independence	40
Factor 22: Member Services	42
Factor 23: Public Interest and Awareness Programs.....	44
Factor 24: Role in Law Reform.....	45
LIST OF ACRONYMS.....	46

INTRODUCTION

The American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) developed the Legal Profession Reform Index (LPRI) to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The Index is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI's companion Judicial Reform Index (JRI), will provide information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal profession" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As a result, CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies. At some point, CEELI may also consider developing an assessment tool for prosecutors as well.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers:

avocat, *avoués à la Cour*, and *advocates aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoués à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoués à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *advocates aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conceil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, other factors further complicated efforts to define the term "lawyer", including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union (CCBE), there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number, only 5,315, or 24 percent, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, i.e., excluding government lawyers and corporate counsel. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

ABA/CEELI's Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34, (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors*. (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers and the Council of Europe's Recommendations on the Freedom of Exercise of the Profession of Lawyer and on ABA/CEELI's more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding higher regard for common law concepts related to the structure and function of the profession of

lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRI's are updated – within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will give ABA/CEELI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA/CEELI has formed a committee that includes the assessor and select ABA/CEELI DC staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials are meant to help issue-spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

² For more in-depth discussion on this matter, see C.M. Larkin, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 *American Journal of Comparative Law*. 605, 611 (1996).



the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Third, combined with the CEELI's Judicial Reform Index (JRI), the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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KOSOVO BACKGROUND

Historical Context

Kosovo was an administrative region of Yugoslavia for most of the Twentieth Century, either as part of “South Serbia” within Royalist Yugoslavia between World War I and World War II, or as a province of Serbia within the Socialist Federal Republic of Yugoslavia [hereinafter “SFRY”] that was created in 1944. The Federal Constitution of 1974 [hereinafter “SFRY Constitution”] gave significant powers to federal units of Yugoslavia, causing decentralization of the country. SFRY Constitution art. 1. Kosovo attained its own constitution, parliament, Supreme Court, and national bank. See generally SAP Kosovo Constitution. As a result Kosovo was, essentially, an equal unit of the federation and links with Serbia were weakened. Throughout this period the region of Kosovo had an ethnic Albanian majority. In 1989, Kosovo’s autonomy was severely restricted, with power over the police, courts, civil defense, as well as economic, social and educational policy taken over by Serbia. The Kosovo Liberation Army [hereinafter “KLA”] began a political and military struggle for an autonomous Kosovo following these actions. The Serbian army and paramilitary police responded by trying to crush the KLA’s separatist movement. War broke out in Serbian controlled Kosovo in 1997-98, where the over 80 percent ethnic Albanian majority had been living under martial law since Serbian President Slobodan Milosevic took control of the “autonomous region”. After a period of bitter local conflict in 1998, and periods of international negotiations, NATO began an air war against Yugoslavia in March 1999. After a 78-day war, the Yugoslav forces retreated from Kosovo. Kosovo then came under the control of the NATO Kosovo Force [hereinafter “KFOR”] and the United Nations.

Kosovo shares the legal tradition of the former SFRY, including the strong influences left behind from being part of the Austro-Hungarian Empire. As an autonomous province in the SFRY, Kosovo shared federal criminal and civil procedure codes with the rest of the SFRY, but had its own criminal code (augmented by federal and some Serbian criminal provisions). As common in other socialist systems, executive branch and party influence in the judiciary was common.

Since the cessation of major hostilities in June 1999, Kosovo has been administered by international civil administration and military security presences authorized by paragraph 5 of United Nations Security Council Resolution 1244, UNSC 4011 Sess. (June 10, 1999) [hereinafter “UNSC Res. 1244”], as a U.N. Protectorate. The international civil presence, the United Nations Mission in Kosovo [hereinafter “UNMIK”], is headed by the Special Representative of the UN Secretary General [hereinafter “UN Special Representative”], which currently administers Kosovo pursuant to Resolution 1244 and UNMIK Regulation 2001/9 (15 May 2001) on A Constitutional Framework for Provisional Self-Government in Kosovo [hereinafter “Constitutional Framework”]. UNMIK will continue to possess certain powers until the status of Kosovo is resolved, such as the functions of policing, defense, foreign affairs, and certain justice matters.

KFOR operates under a unified military control and command structure separate from UNMIK. UNSC RES. 1244, par. 7 & Annex 2 par. 4. KFOR was deployed, among other things, to establish a durable cessation of hostilities, provide a safe environment for all people of Kosovo, and to facilitate the safe return of displaced persons and refugees. *Id.* KFOR and its international personnel are not subject to the authority of UNMIK, and enjoy immunity from the Kosovo courts.³

³ See Military Technical Agreement Between the International Security Force (“KFOR”) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (9 June 1999); and UNMIK/REG/2000/47 On the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, 2000/47 O.G. 4-2000 [hereinafter “UNMIK/REG/2000/47 On Immunity of KFOR and UNMIK”].

Overview of the Legal Profession

The term "legal professional" includes many related professions in Kosovo, all of which require an undergraduate degree from a law faculty. These include: advocates, in-house lawyers, legal assistants/*praktikants*, prosecutors, judges and professional associates/law clerks. Following graduation, graduates may pursue one of these career paths, and in some cases may change careers within these fields with additional examinations and training.

The LPRI will focus on advocates (lawyers registered with the Kosovo Chamber of Advocates [hereinafter "KCA"] (also referred to as the Kosovo Bar Association) and non-advocate lawyers (lawyers who are not registered with the KCA).

- Advocates

Under Article 2 (2) of the Draft Law on Advocacy (2004)⁴ "[t]he advocate profession may only be practiced by advocates." In addition, under Article 2 (4) "[l]egal assistance cannot be provided by professionals in other fields, as part of the practice of their profession." Furthermore, advocates are the only lawyers who can represent criminal defendants in specified obligatory defense cases.

It is important to note that most advocates have at least a minimal civil case practice in addition to their criminal defense or other legal assistance work.

Under Article 35 of the Law on Advocacy and Other Legal Assistance (Official Gazette of SAP Kosovo 06 No. 011-69/79) becoming an advocate requires registering in the KCA Registry of Advocates. Under Article 36 in order to register in the KCA Registry an applicant must fulfill several conditions. These are:

1. Be a Yugoslav citizen (this is changed to permanent resident of Kosovo in the Draft Law on Advocacy);
2. Be able to work;
3. Have a Law degree;
4. Have passed the Jurisprudence Examination⁵ or have the same status with those who have passed it;
5. Not be a worker in a common enterprise; and
6. Be a trusted person in order to carry out the advocates' profession.

In addition, the applicant should not be a "person who is under investigation, or has been convicted for criminal offences against the people and state, against humanity and international law, against the armed forces, and other criminal offenses committed for self interest or low motives."

⁴ The Draft Law on Advocacy has been passed by the Kosovo Assembly, but still needs to be signed by the UN SRSG Special Representative in Kosovo.

⁵ The Jurisprudence Examination is sometimes referred to as the "Bar Examination", the "Judicial/Bar Examination", the "Judicial Examination" or the "Jurisprudence Examination. For the purpose of consistency, we will refer to the examination as the "Jurisprudence Examination".

The process for registering as an advocate is also outlined in the Draft Law on Advocacy. In particular, under Article 6 (1) (a-i) the right to register requires that a person:

- a. has the ability to work;
 - b. is a permanent resident of Kosovo;
 - c. has finished Law Faculty or another superior law education, which is recognized by the Ministry of Education of Kosovo as superior legal education;
 - d. has completed at least one year trainee requirement (one year of internship for “*praktikants*”) in advocacy, Court, or has a two year trainee experience in Public Administration;
 - e. has passed the Jurisprudence Examination in Kosovo;
 - f. has given a solemn oath;
 - g. has not been sentenced for criminal acts that would render him/her indecent for practicing the advocacy profession, following the Code of Professional Ethics;
 - h. Has not been expelled or suspended from a judgeship position or from practicing the profession of advocate. In case of dismissal the request may be filed again following a period of five years, after the decision was taken;
 - i. Has not engaged in activities that are not in compliance with the profession of Advocate, in particular activities that negatively affect his professional independence.
- In-house Counsel (Lawyers working for companies)

In-house counsel handle civil/commercial/labor matters for their employers. Lawyers working for companies as in-house counsel, or for NGOs or other organizations usually complete two years of internship and pass the Jurisprudence Examination, but are not members of the KCA. Lawyers who are members of the KCA must resign their membership when taking employment, because Law on Advocacy prohibits advocates from being employees. Law on Advocacy and Other Legal Assistance, art. 36.5. Resigned members can resume membership in the KCA once leaving their employment by paying the appropriate fees.

- Advocacy Trainee/*Praktikants* (Lawyers working for advocates)

Advocacy Trainee/*Praktikants* are law school graduates who have not yet passed the Jurisprudence examination. Under Article 55 of the Law on Advocacy and Other Legal Assistance “[t]he right to work as a trainee is obtained by registering in the register of the advocate’s trainees. The Chamber of Advocates keeps the register. In the register of advocacy trainees may be registered a graduated lawyer, who has been admitted to practice as a trainee in an advocate’s office.” *Id.* art. 60. Once registered the trainee has to pass the Jurisprudence Examination within three years of becoming eligible to take it. *Id.* The Law on Advocacy and Other Legal Assistance allows for limited practice of legal assistants, including appearing in court for some cases. However, under Article 56 “the advocate trainee cannot practice independently or on his own behalf the advocacy.” *Id.* art. 56. Essentially trainees must be supervised by an advocate. Although trainees may represent clients in court, they do so only under the guidance of an advocate. “The advocate’s trainee is obliged to work according to the directives and the authorizations of the advocate...” *Id.* art. 58.

The Draft Law on Advocacy does not change the rules and conditions for advocate trainees. For example, under Article 35 (2) “[h]e/she is not allowed to practice the profession

independently, but only with the permission of and on the activities set by the supervising advocate.” This is reaffirmed in Article 38 (3) which states that “independent activity of the trainee is prohibited”. In addition, under Article 36 (5) the advocate trainees name will be removed from the register of advocate trainees if “after three years after his/her activity as trainee they have not passed the Jurisprudence Exam.”

- Prosecutors

Prosecutors are law faculty graduates, who have completed an internship (often in a prosecutor’s office) and passed the Jurisprudence Examination. The Law on Jurisprudence Examination (Official Gazette of Socialist Autonomous Province of Kosovo, No.10/1977) arts. 2-4. The Provisional Criminal Procedure Code of Kosovo Chapter IV outlines the duties and responsibilities of public prosecutors.

- Judges

Judges are graduates of the law faculty, who have passed the Jurisprudence Examination and satisfied the applicable work experience requirement. Under Article 69 of the Law on Regular Courts (Official Gazette of Socialist Autonomous Province of Kosovo, No. 21/78), to be appointed as a judge one must meet certain requirements. For example, a judge must be “a Yugoslavian citizen⁶ who fulfills general conditions to obtain the status of worker, who has graduated law faculty, and who possesses moral-political qualities for performing the function.” In addition, Article 69 imposes a further condition of passing the Jurisprudence Examination for one who wants to become a judge of the municipal, the district, and the commercial court. To become a judge of the Supreme Court of Kosovo one must be an “eminent legal expert whose previous work offers guaranties for complete and proper performing of the function of judge in this court.” *Id.* Appointment of judges and prosecutors is regulated under UNMIK Regulation 2001/8. The rights and duties of a judge are clearly delineated in the Law on the Regular Courts Articles 73-76.

Under Article 92 a lay judge may also be appointed. The only requirement is that they are “a Yugoslav citizen who possesses moral-political qualities and abilities to perform the duties of a judge.” Lay judges are appointed for a mandate of four years and after this time they may be re-appointed. *Id.*

Law faculty graduates interested in a career as a judge or within the judicial bodies usually start as a law clerk (court assistant). The activities and duties of law clerks are addressed in the Law on Professional Associates (Official Gazette of the Socialist Autonomous Province of Kosovo, No. 14/90).

Professional Associates in courts are also dealt with in the Law on Regular Courts. Under Article 100, “a professional associate in a court, pursuant to the conditions defined in Article 99 of this law, must have graduated law faculty and passed the Jurisprudence Examination.” The professional associate assists the judge in his/her work, makes drafts of court decisions, takes records of actions, suggestions, and other submissions and statements of parties and exercises independently, or under supervision and instruction of the judge, other activities related to the court.

- Notaries

⁶ UNMIK Regulations and subsidiary instruments take precedence over any prior law. Therefore, references to “Yugoslavian citizen”, the “Socialist Federal Republic of Yugoslavia” or other such references, do not apply.

Kosovo currently has no Law on Notaries and, unlike many post-socialist countries; notaries are not responsible for drafting or filing legal documents.

- Non-Advocates/Power of Attorney

Non-advocates may represent others in court under Article 75 of the Law on Advocacy and Other Legal Assistance, which states that “[i]n the territory where there are no advocates or territories where it is proved that there are not sufficient advocates and the need exists that the legal assistance be provided by other persons, employees in the service for legal assistance who fulfills the requirements for practicing advocacy may represent the citizens in a procedure before the courts and in the other state organs and organizations.”

The Draft Law on Advocacy does not provide specific authorization for non-lawyer representation. However, under Article 2 (6), “provision of legal assistance by institutions, organs or other organizations may be regulated only by a special law.” Under Article 3, “The Chamber of Advocates may initiate court procedure in case legal assistance is provided by unauthorized persons, unless the law envisages otherwise.” Because UNMIK/REG/1999/24 On the Applicable Law in Kosovo keeps the laws of the former Yugoslavia in force if UNMIK regulations or new laws do not specifically address an issue, the provisions in the Law on Advocacy and Other Legal Assistance would still apply.

The Draft Law on Advocacy adds an important section on the right of Foreign Advocates to practice advocacy in Kosovo, as long as a special license is obtained from the Chamber of Advocates. *Id.* art. 40. The change accommodates the work of foreign advocates from the international community in Kosovo. Therefore, the right to represent a client in a court proceeding is not limited to persons that are permanent residents of Kosovo, have finished law school in Kosovo, and have passed the Jurisprudence Examination.

The scope of this report is limited to advocates and non-advocate lawyers. Some factors, for example those pertaining to legal education, can be applied to the broader legal profession.

Organizations of Legal Professionals

The Kosovo Chamber of Advocates (KCA) is a registered non-governmental organization with an established organizational structure. Article 4 of the Draft Law on Advocacy requires that one must be a member of the KCA in order to practice as an advocate. “The right for practicing the advocacy is obtained by registration in the Register of Advocates maintained by the Chamber of Advocates.” Under Article 73 of the Provisional Criminal Procedure Code of Kosovo UNMIK/REG/2003/26 (6 July 2003) [hereinafter “Provisional Criminal Procedure Code”] KCA members, acting as “*ex officio* advocates” are the only persons authorized to represent indigent criminal defendants.

The KCA was established on June 10, 1973 as per the Law on Advocacy and Other Legal Assistance (“Ligji mbi Avokaturen dhe Ndihtmen Tjeter Juridike”), adopted in 1973 (Official Gazette of the Socialist Autonomous Province of Kosovo, No. 43/73). The Law on Advocacy and Other Legal Assistance was amended twice; in 1977 (Official Gazette of the Socialist Autonomous Province of Kosovo, No. 46/77), and on December 24, 1979 (Official Gazette of the Socialist Autonomous Province of Kosovo, No. 48/79). (Source: Kosovo Chamber of Advocates). Until the formation of the KCA, the Chamber of Advocates in Belgrade registered advocates from the Autonomous Province of Kosovo. However, Kosovar advocates practiced before World War II. After the UNMIK Interim Administration came into force in June 1999, the KCA held its first Assembly since the war, on April 27, 2001, with strong international support to reinstate a bar organization.



At the time the UNMIK Interim Administration came into force, no Jurisprudence Examination had been held in Kosovo since 1990. Due to a shortage of judges, who are required to take the Jurisprudence Examination, the Organization for Security and Cooperation in Europe [hereinafter "OSCE"] and UN moved quickly to reinstate the Jurisprudence Examination (see Factor 9).

Since reinstatement of the examination in December 2001, KCA membership has increased. There were 300 advocates registered with the KCA in January 2004. The number has increased by 8.5% as of the date of this report.

At the KCA annual Assembly meeting in April 2004, the KCA Assembly approved the Draft Law on Advocacy. In August 2004 the Parliament approved the Draft Law on Advocacy in principle, which was submitted to UNMIK in the fall of 2004. The Draft Law on Advocacy has a number of proposed changes that may affect the legal profession. We have identified significant changes based on the latest Draft Law on Advocacy. Additional changes may be made as the Draft Law on Advocacy proceeds to final approval.

SUMMARY FINDINGS

The LPRI assessment for Kosovo reveals a legal profession that has made important strides in legal reform, but that is still struggling to overcome the legacy of post-World War II socialist Yugoslavia limitations on representation, recover from the 1990s conflict, achieve equitable minority representation and adjust to a market economy with private sector development.

Kosovo experienced a unique situation in 1999 when war resulted in a transition from Serbian to United Nations control. Since then, international influence exposed the legal profession to both civil and common law practices and an unprecedented variety of procedures and methodologies. Establishing equality in the courtroom among the advocates for all parties in civil and criminal cases will require training and preparation to meet the needs of their respective clients and appreciation of the need to protect the rights of Kosovo citizens. Important positive developments were observed. Advocates report no direct efforts by the state to interfere with their work. Advocates report sufficient access to clients. There is respect for confidential communications between lawyer and client. Advocates have been granted immunity for diligent exercise of the tools of the profession.

The greatest challenges to reform of the legal profession that emerge from this assessment are the need for better education and training and a viable disciplinary system. Competent advocates require better education, beginning with law school and including Continuing Legal Education. The law faculty needs support for a legal clinical program, available to all law students, that provides practical advocacy skills training. The *Praktikant* (apprenticeship) program is being implemented and monitored by the Kosovo Chamber of Advocates but needs continuing support from the international community in order to provide training needed in the practice of law.

A disciplinary system must address the issues of incompetence and corruption in order to begin building public confidence and trust. Kosovo has only 346 advocates. Disciplinary action within the small community of advocates is difficult, but must be undertaken in order for the community to have trust and confidence in the profession. “All complex schemes of corruption are done with the help of lawyers, and yet there are virtually no cases of disbaring lawyers (advocates) or applying anti-corruption peer pressure.”⁷

The Draft Law on Advocacy, if and when finally approved, will have an impact on the legal profession in Kosovo. However, the desire of advocates to improve the profession will be the most significant factor. ABA/CEELI will continue to monitor legislative developments to see how the revised law may affect, positively and negatively, the factors discussed in the body of this report.

⁷ Tisne and Smilov, *From the Ground Up: Assessing the Record of Anti Corruption Efforts in South Eastern Europe*, Policy Studies Series 2004; The Soros Foundation Network at 69.

TABLE OF FACTOR CORRELATIONS

The Kosovo December 2004 LPRI analysis shows a legal profession in transition. The LPRI correlations may give a sense of the significant issues facing the Kosovo legal profession. The correlations are best understood when considered with the underlying analysis. ABA/CEELI considers the significance of particular correlations to warrant further study. ABA/CEELI invites comments and additional information to improve future LPRI assessments. The LPRI assessment is part of ongoing efforts to monitor and evaluate the progress of legal reform in Kosovo.

I. Professional Freedoms and Guarantees		
Factor 1	Ability to Practice Law Freely	Neutral
Factor 2	Professional Immunity	Positive
Factor 3	Access to Clients	Neutral
Factor 4	Lawyer-Client Confidentiality	Positive
Factor 5	Equality of Arms	Neutral
Factor 6	Right of Audience	Neutral
II. Education, Training, and Admission to the Profession		
Factor 7	Academic Requirements	Neutral
Factor 8	Preparation to Practice Law	Negative
Factor 9	Qualification Process	Neutral
Factor 10	Licensing Body	Positive
Factor 11	Non-discriminatory Admission	Neutral
III. Conditions and Standards of Practice		
Factor 12	Formation of Independent Law Practice	Neutral
Factor 13	Resources and Remuneration	Negative
Factor 14	Continuing Legal Education	Neutral
Factor 15	Minority and Gender Representation	Negative
Factor 16	Professional Ethics and Conduct	Negative
Factor 17	Disciplinary Proceedings and Sanctions	Negative
IV. Legal Services		
Factor 18	Availability of Legal Services	Neutral
Factor 19	Legal Services for the Disadvantaged	Neutral
Factor 20	Alternative Dispute Resolution	Negative
V. Professional Associations		
Factor 21	Organizational Governance and Independence	Positive
Factor 22	Member Services	Neutral
Factor 23	Public Interest and Awareness Programs	Negative
Factor 24	Role in Law Reform	Neutral

I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

CONCLUSION	CORRELATION: NEUTRAL
<p>Independence of the legal profession is well defined by the law and advocates report that they can practice without improper interference, intimidation or sanctions. However, community peer pressure may interfere in some highly sensitive cases.</p>	

Analysis/Background:

UNMIK Regulation 2001/9 (15 May 2001) on A Constitutional Framework for Provisional Self-Government in Kosovo [hereinafter “Constitutional Framework”] does not address the legal profession except as to the Jurisprudence Examination (see Factor 9). Thus, the Law on Advocacy and Other Legal Assistance (Official Gazette of SAP Kosovo 06 No. 011-69/79), is the primary applicable legal instrument regulating the legal profession. Article 4 provides: “The advocates and other authorized persons to provide legal assistance are independent in performing their function. They are entitled and are obliged that within the limits of the law and the given authority to undertake actions what they consider to be helpful to the party receiving their legal assistance.”

Article 1 (1) of the Draft Law on Advocacy, which is pending final approval by the UNMIK Representative, provides that: “...Advocacy is a free and independent profession, self-regulated and self managed.”

The independence of the profession is further enumerated in Article 1(3), which provides that:

“Independence of the advocacy is realized through:

- a. Independent practice of the advocate’s profession as a free profession;
- b. Provision of legal assistance in an independent manner;
- c. Organization of advocates through the [Kosovo] Chamber of Advocates [hereinafter “KCA”] as an independent organization;
- d. Authorization of the Chamber of Advocates for issuing normative acts with the aim of regulating and organizing the advocacy.”

Thus the legal framework provides advocates the basis to represent clients without interference.

While the courts have limited power to impose sanctions for misconduct during proceedings, sanctions are sparingly, if ever, used. There were no reports of sanctions being imposed for representation.

No interference in client representation by the state (either Kosovo or UNMIK) was reported although some respondents commented on community peer pressure on Albanian advocates in representation of clients in highly sensitive cases (usually war crimes or inter-ethnic violence). The media extensively reports these cases and sometimes all sides participate in trying the case

in the media. OSCE’s Legal System Monitoring Section (part of the Department of Human Rights and Rule of Law) has reported a number of cases where media pressure has affected witness protection (see Llapi Case discussion Factor 16).

The KCA has the ability through Section VIII, “The Disciplinary Liability for Advocates and *Praktikants*” of the Statute of the Kosovo Chamber of Advocates [hereinafter “KCA Disciplinary Code”], to impose sanctions on its members but has not used that ability to unjustly sanction advocates. However, the KCA Disciplinary Council has not been as open or active as necessary to gain the public’s trust (see Factor 17).

Advocates enjoy freedom from governmental pressure or sanction in their work.

Factor 2: Professional Immunity

Lawyers are not identified with their clients or the clients’ causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

CONCLUSION	CORRELATION: POSITIVE
Advocates are provided with broad professional immunity under the law and are not overly identified with their clients or clients’ causes.	

Analysis/Background:

Under both the Law on Advocacy and Other Legal Assistance and the Draft Law on Advocacy, advocates enjoy a broad spectrum of professional immunity. For example, under Article 21 of the Law on Advocacy and Other Legal Assistance “[t]he advocate cannot be detained for the reason that he has committed a criminal offense in the course of his duty.”

Under Article 17 (1) of the Draft Law on Advocacy, “[c]riminal prosecution of an advocate following a public expression of opinion during a court procedure is excluded (subject to discussions). Criminal responsibility of advocate remains invincible.” However, under Article 11 (4) “he/she may not make public or transmit information of his/her client that is personal or confidential.”

Under Article 17 (2) “[t]he search of an advocate or his office may only be ordered by a competent court, provided that requirements envisaged by criminal or civil procedure laws have been met.” Under Article 17 (3) “[w]hen the competent court decides to search the advocate and his/her office, it has to immediately notify the Chamber of Advocates [KCA].” No search can be performed without a representative of the Chamber of Advocates present, unless the Chamber fails to respond to the notice. Furthermore, under Article 17 (4) during the search “the judge who ordered it or another judge appointed by him/her must be present, so he/she can decide what or which document or cases have to be searched.” The evidence obtained must be kept confidential and cannot be used against a client. Article 17 of the Draft Law on Advocacy is consistent with Article 22 of the Law on Advocacy and Other Legal Assistance. However, Article 17 of the Draft Law on Advocacy imposes stricter protections and language than contained in Article 22 of the Law on Advocacy and Other Legal Assistance. For example, Article 22 states that “[t]he search of the office archive may be done only according to the warrant of the investigating judge in the criminal procedure against the advocate. The order must specify the document or the case that has to be searched for. The search may not violate the confidentiality to the detriment of the party. In case of a search the Chamber of Advocates has to be informed in time. The representative of the Chamber may participate in the search.”

Advocates reported no actions against them for statements made while carrying out their professional duties.

While all respondents noted that advocates were often identified with clients and the client's causes, advocates did not feel overly identified with their clients or subject to special harassment because of whom they were representing. Both advocates and the public accepted identification with clients as the status an advocate must be willing to assume, especially in representation of criminal defendants.

Factor 3: Access to Clients

Lawyers have access to clients; especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Conclusion	Correlation: Neutral
<p>Advocates have access and adequate time and facilities for communication with clients and preparation of defense. However, some police interference with access to clients is reported.</p>	

Analysis/Background:

The Provisional Criminal Procedure Code of Kosovo, UNMIK/REG/2003/26 (6 July 2003) [hereinafter "Provisional Criminal Procedure Code"] and the Provisional Criminal Code of Kosovo, UNMIK/REG/2003/25 (6 July 2003) [hereinafter "Provisional Criminal Code"], effective April 2004, are applicable to both the Kosovo regular court system and to International Judges appointed to District Courts throughout Kosovo to hear sensitive cases involving alleged war crimes or inter-ethnic violence.

Right to Counsel

The basic right to defense counsel is contained throughout the Provisional Criminal Procedure Code. The Provisional Criminal Procedure Code provides that suspects/defendants are entitled to defense counsel at all stages of criminal proceedings:

- From the time of arrest (Articles 12 (6); 14 (1) (2); 213 (1-2); and 214 (1) (4)),
- Before and during every examination (Articles 69 (2); 218 (1); 231 (2) (4) and (3); and 269 (3)),
- During the confirmation hearing (Article 314 (1) and (2)),
- During the main trial (Articles 321 (1) and (2), and 342).

Furthermore, the Provisional Criminal Procedure Code provides that the accused/defendant be informed of the right to a defense counsel of his choice or free of charge:

- at the first examination (Articles 12 (5) and 269 (3));
- before every examination (Articles 69 (2) and 231 (2) (4));
- when deprived of liberty (Articles 14 (2); 214 (4); 270 (6); 279 (5) (1); and 282 (2));

- at the beginning of the confirmation hearing (see Article 314 (1));
- in the summons to appear at the main trial (Article 321 (2)); and
- At the main trial (Article 356 (2 (3))).

Article 12 (5) states: “[a]t the first examination the court or other competent authority conducting criminal proceedings shall inform the defendant of his or her right to a defense counsel, as provided for by the present code.” Article 12 (6) further states that “[i]n accordance with the provisions of the present code, any person deprived of liberty shall have the right to the services of a defense counsel from the moment of arrest onwards.”

Furthermore, Article 14 (1) (1-3) requires that any person deprived of liberty shall be informed promptly, in a language, which s/he understands of:

1. The reasons for his or her arrest;
2. The rights to legal assistance of his or her own choice; and
3. The right to notify, or have notified, a family member or another appropriate person of his or her choice about the arrest.

Defendants may waive the right to counsel in certain instances. For example, under Article 69 (3), except in cases of mandatory defense (see Article 73 of the Provisional Criminal Procedure Code), a defendant may waive the right to defense counsel. However, “[a] waiver must be in writing and signed by the suspect or the defendant and the witnessing competent authority conducting the proceedings, or made orally on video tape or audio-tape, which is determined to be authentic by the court.” The waiver may be revoked at any stage. *Id.* art. 69 (5).

Lawyers Access to Clients

The law on access to clients is enumerated in the Provisional Criminal Procedure Code. Respondents reported that access to clients has improved dramatically in the last four years.

Persons detained must be brought before a judge promptly, within a maximum period of 72 hours from the moment of arrest. *Id.* art. 14. Respondents complained that the police appear to take the full 72 hours allocated before advising the prosecutor (under prior law the investigative judge) of detainment and thwarting counsel’s attempts to meet with clients during initial detainment. Some respondents criticized UNMIK and KFOR more than local police for not allowing advocates to be present with clients during the initial questioning.

In practice, the police inform detained persons of their rights, including their right to an advocate if they cannot afford one (for certain offenses). However, there were some reports of police denying information to advocates of the whereabouts of detained persons, but this situation appears to be improving.

Adequate Time and Facilities to Meet with Clients

Under Article 12 (1) of the Provisional Criminal Procedure Code “[t]he defendant shall have the right to have adequate time and facilities for the preparation of his or her defense”.

The conditions for conferring with clients are generally only limited by the rules of the detention facility (generally limited to visiting hours) and availability of space. Advocate respondents reported a few problems with availability of space for meeting with clients and information on when they can meet with clients as there is no system for making appointments. Sometimes, guards admonish advocates to “hurry up” as others are waiting to use the space.

Advocates report that they are provided sufficient time to meet with clients and those consultations generally last less than an hour. Advocates report no problems with the time, length or number of visits.

Factor 4: Lawyer-Client Confidentiality

The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

Conclusion	Correlation: Positive
Rights to confidential communication and consultation are respected in accordance with the limitations established by law.	

Analysis/Background:

Article 77 (2) (applicable to defense counsel generally) of the Provisional Criminal Procedure Code provides that “the defense counsel has the right to freely communicate with the defendant or arrested person orally and in writing under conditions which guarantee confidentiality.” In addition, under 213 (3) (applicable to provisional arrest and police detention) “[t]he arrested person has the right to communicate with defense counsel orally and in writing; Communications between an arrested person and his or her defense counsel may be within sight but not within hearing of a police officer.” In practice, respondents stated that a police officer nearly always stands outside the door during meetings. Respondent advocates were not concerned about this and generally thought the guards/police did not listen to conversations.

This is a significant departure from the prior law (Article 74 (2) of the FRY Criminal Procedure Code) which permitted the investigative judge to supervise correspondence between the defendant and defense counsel at the investigative stage, and which also allowed the investigative judge or some official to be present during conversations between defense counsel and client. Prior law provided for confidential correspondence and communication between the defendant and defense counsel once the investigation was completed or an indictment was brought. *Id.* art. 74 (3).

Under Article 77 (3) of the Provisional Criminal Procedure Code “[t]he defense counsel has the right to be notified in advance of the venue and time for undertaking any investigative action and to participate in them and to inspect the records and evidence of the case in accordance with the provisions of the present Code.”

After the accused is charged, lawyer-client confidentiality is maintained. No respondent reported a breach during the post-accusation phase and there were no reports of searches of advocates’ offices or harassment or intimidation by officials.

Section II, Articles 15-20, of the KCA Code of Lawyer’s Professional Ethics [hereinafter “KCA Code of Ethics”] outlines the requirements for maintaining attorney-client confidentiality (professional secrets). Under Article 16 “[t]he lawyer is required to take into account the secrecy of his client and to give him reliable information. The lawyer must judge what the party wants to keep secret.” Article 17 enumerates that “[a]ny information given in confidence,... all documents, notes, accounts, sound recordings, photographed records and similar notes that are in his office represent secrets of the lawyer.” According to Article 18, the duty of confidentiality continues even after termination of representation.

Nevertheless, there are situations where an advocate can or must reveal information constituting a professional secret (confidential information). For example, under Article 20 (a) (i-ii) the advocate must not disclose information unless: (i) the client gives informed consent to disclosure; or (ii) the disclosure is permitted by paragraph (b).

Article 20 (b) (i-vi) provides that “[a]n advocate may reveal (disclose) information protected by professional secrecy (given in confidence) when:

- (i) Disclosure is in the state interest or is necessary to reveal a threat to (endangers) the territorial integrity of Kosovo;
- (ii) Disclosure is reasonably necessary to prevent reasonably certain death or substantial bodily harm;
- (iii) To defend against a claim brought by the client against the advocate;
- (iv) To secure legal advice about the advocate’s compliance with the Kosovo [Disciplinary] Code;
- (v) To prevent the advocate from being used to perpetrate a crime or fraud; or
- (vi) To comply with court order or other law.”

It should be noted that the disclosures under Article 20 are not mandatory but are apparently at the discretion of the advocate.

Article 21 states that the disclosure rules are the same for a legal person or any other body.

Article 15 of the Law on Advocacy and Other Legal Assistance further provides that: “[t]he advocate has a duty of confidentiality regarding privileged information. The advocate is not obliged to testify to what the party has disclosed to him while providing legal assistance, and cannot be a witness against his client.”

In essence, confidentiality of communications is respected in both criminal and civil cases and respondents did not report any abuses.

Factor 5: Equality of Arms

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

Conclusion	Correlation: Neutral
<p>Under the new criminal codes, prosecutors have affirmative legal duties to furnish defense counsel with information. Shortage of facilities and staff may result in bureaucratic delays. However, adequate access was being provided through the courts prior to enactment of the new codes and there is no evidence this will not continue. Insufficient training for criminal defense lawyers adversely affects their ability to access relevant information, as compared to better trained prosecutors.</p>	

Analysis/Background:

Under Article 10 (1) of the Provisional Criminal Procedure Code “[t]he defendant and the prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise

provided for by the present code.” This clear statement of intent is followed throughout all stages of the criminal investigation and trial under the new criminal procedure code.

During the investigation

According to Article 77 (3) of the Provisional Criminal Procedure Code “[t]he defense counsel has the right to be notified in advance of the venue and time for undertaking any investigative actions and to participate in them and to inspect the records and evidence of the case in accordance with the provisions of the present Code.” Under the Provisional Criminal Procedure Code, the following rights are specifically enumerated:

- Examination of suspect or defendant

Under Article 69 (2) “[b]efore every examination of the suspect or the defendant, the police, the public prosecutor, the pre-trial judge or the presiding judge shall instruct the subject or the defendant that he or she has the right to engage a defence counsel and that a defence counsel can be present during the examination.” According to Article 231 (1) “[t]he examination of the defendant shall be conducted by the public prosecutor. The public prosecutor may entrust the examination to the judicial police or, in exceptional cases, to the regular police.” Before any examination, the defendant shall be informed of the right to receive assistance of defence counsel and to consult with him or her prior to as well as during the examination.” *Id.* art. 231 (2) 4). In the event that the examination of the defendant is conducted in a manner that is violative of the provisions contained in Article 155 (1), Article 231 (2) or 231 (3), or Article 234 (2) “the statements of the defendant shall be inadmissible.” *Id.* art. 235.

- Examination of witness or expert witness

Under Article 237 (4) “[t]he public prosecutor may decide to invite the defendant, his or her defence counsel and the injured party to be present during the examination of witness or expert witness.” The defence counsel is able to question witnesses before their statements are introduced as evidence. This is important in that in accordance with Article 156 (2), “a statement given to police or the public prosecutor may be admissible in court *only* [sic] when the defendant or defense counsel has been given the opportunity to challenge it by questioning the witness during some stage of the criminal proceedings.”

- Searches and site inspection or reconstruction

Under Article 242 (1) “[b]efore beginning the search, the judicial police shall provide the order to the person against whom the order is directed and such person shall be informed that he or she has the right to contact a lawyer who has the right to be present during the search.” However, under Article 241 (2) the judicial authorities only have to postpone the search for two hours once a lawyer is requested and the lawyer is informed. In addition, “[i]n exigent circumstances the judicial police may begin the search even before the expiration of the time limit for the lawyer to arrive.” Furthermore, under Article 242 (4) “a search may start without prior presentation of the order or the prior request for surrender of the person or objects sought if armed resistance is expected, or if the effectiveness of the search is likely to be undermined if it is not conducted immediately and without warning, or if the search is conducted on public premises.”

Finally under Article 254 (3) “[t]he defendant and his or her defence counsel have the right to be present during the site inspection or reconstruction.”

- Collection of evidence upon defense counsel or public prosecutor’s request

Under Article 238 (1) “The public prosecutor or the defendant may, on an exceptional basis, request the pre-trial judge to take testimony from a witness or request expert analysis for the purpose of preserving evidence where there is a unique opportunity to collect important evidence, or there is a significant danger that such evidence may not be subsequently available at the main trial.” In addition, Article 238 (2) states, “...The defendant and his or her defence counsel and the public prosecutor shall be present at the hearing for taking of testimony.” Essentially, defense counsel may request the pre-trial judge to take testimony from a witness or request expert analysis to preserve evidence and may, under Article 239 (2), apply to the public prosecutor to collect evidence.

- Inspection of records and evidence

At all stages of the proceedings the defense has full access to the records of the examination of the defendant, material obtained from or belonging to the defendant, and material concerning such investigative action to which defense counsel has been or should have been admitted or expert analyses. *Id.* art. 142 (1).

During the Confirmation of the Indictment

Under Article 307 (1) (1-6), defendant’s rights to information are protected during the new proceeding upon confirmation of the indictment. Specifically, Article 307 (1) (1-6) states that “[n]o later than the filing of the indictment the prosecutor shall provide the defence counsel with the following materials or copies thereof which are in his or her possession, control, or custody, if these materials have not already been given to the defence counsel during the investigation:

- 1) Records of statements or confessions;
- 2) Names of witnesses whom the prosecutor intends to call to testify and any prior statements made by those witnesses;
- 3) Information identifying any persons whom the prosecutor knows to have admissible and exculpatory evidence or information about the case and any records of statements, signed or unsigned, by such persons about the case;
- 4) Results of physical or mental examinations, scientific tests or experiments made in connection with the case;
- 5) Criminal reports and police reports; and
- 6) A summary of, or reference to, tangible evidence obtained in the investigation.

After filing the indictment, the prosecutor shall provide defense counsel with any new materials within ten days of their receipt. *Id.* art. 307 (3).

Defense counsel has a reciprocal obligation of disclosure to the prosecutor. The prosecutor shall be notified by defense counsel no later than 8 days after receipt of materials from the prosecutor of an intent to present an alibi (with relevant information), or intent to present a ground for excluding criminal liability (with witnesses and other evidence in support thereof) and shall provide the prosecutor with names of potential defense witnesses. *Id.* art. 308 (1).

Collection of new evidence

Article 332 (1) allows the defense to call new witnesses or have new evidence collected. Defense counsel may file a motion to summon new witnesses or expert witnesses to the main trial or for new evidence to be collected even after the main trial is scheduled,.

The Provisional Criminal Procedure Code unambiguously places the parties on equal footing through all stages of the criminal procedure. As the Provisional Criminal Procedure Code has only recently been implemented, it is difficult to ascertain if information is being released as envisioned. Respondents indicated concern that the prosecutor’s offices are not equipped to respond to this duty as all Kosovo prosecutors have a shortage of facilities and staff for copying and making records available. According to respondents, under prior law, defendant’s obtained these records from the court and paid the expenses for records. Essentially, the new procedures place a heavy burden on an ill equipped procuracy.

Article 80 (1) of the Law on General Administrative Procedure (applicable to both civil and administrative cases) provides that “[p]arties are entitled to examine documents relating to the issue and, with their own expenses, to reproduce necessary documents.” In addition, Article 80 (2) states that “[a]ny other person, social organization or professional associations, are also entitled to examine and reproduce documents at their own expense, provided that a justifiable interest exists.” In practice, lawyers report little difficulty with reviewing files; but obtaining copies is often a slow procedure. No one reported that records were not being supplied and oftentimes delay was caused in international court proceedings by the time required to obtain translations.

Public access to court records is restricted. Generally only parties and their lawyers have access. Some respondents report that prosecutors have received more training on the new Criminal and Criminal Procedure Codes. As a result, insufficient training for criminal defense lawyers adversely affects their ability to access relevant information, as compared to the better trained prosecutors.

Factor 6: Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

Conclusion	Correlation: Neutral
<p>Advocates are granted the right to appear before judicial and administrative bodies on behalf of their clients. Respondents reported reasonably equal treatment; however, <i>ex parte</i> communications between courts and parties raise concern regarding equal treatment.</p>	

Analysis/Background:

Article 10 of the Provisional Criminal Procedure Code grants the prosecutor and defendant equal status and outlines the rights of advocates at trial, including the right to present evidence and summon witnesses. For example, Article 10 (1) states that “The defendant and the prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise provided for by the present Code.” Article 10 (2) states that “[t]he defendant has the right and shall be allowed to make a statement on all the facts and evidence, which incriminate him or her, and to state all facts and evidence favorable to him or her. He or she has the right to examine or to have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.”

Respondents have raised concerns that parties, lawyers and prosecutors have ongoing *ex parte* access to judges and other court officials that creates the perception of favoritism, unequal treatment and, potentially, corruption.

Advocate respondents reported equal treatment by court officials. Judges and prosecutors frequently noted that the affirmative duty to have all evidence presented sometimes required that

they assist the defense counsel with court proceedings; i.e. advising counsel to object to evidence, make a motion, etc. The Provisional Criminal Procedure Code requires more active participation by defense counsel than prior law. Whether they will be able to meet the challenge is unknown.

As there are so few advocates (346), court officials generally have prior experience with individual advocates. A small percentage of counsel represents many of the high profile criminal cases and these advocates have well known reputations. Respondents reported that more experienced and prominent advocates tended to be treated deferentially. With a small population (less than 2 million) and a large number of criminal cases still remaining from the 1999 conflict and repercussions since then, the public is well aware of prominent counsel. Ethnically sensitive cases receive wide publicity and are followed by the public. In addition, media pressure and reporting often results in a high degree of scrutiny.

A number of advocates reported that they were generally treated better in international courts than in local courts. In addition, they reported that they were treated more professionally in international courts than in local courts and given the opportunity to argue their client's case and present evidence.

II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
All advocates and lawyers are required to be graduates from a law faculty; however, the quality of legal education is poor.	

Analysis/Background:

In order to practice as an advocate one must first register in the Register of Advocates maintained by the Kosovo Chamber of Advocates [hereinafter "KCA"]. The conditions and requirements for licensing of advocates are outlined in the Law on Advocacy and Other Legal Assistance and the Draft Law on Advocacy as well. Under Article 36 of the Law on Advocacy and Other Legal Assistance the right to register in the Register of Advocates of the KCA belongs to whoever meets the following criteria:

1. Is a Yugoslav citizen;
2. Is able to work;
3. Has a law degree;
4. has passed the jurisprudence examination, or has the same status as those who have passed it;
5. is not a worker in a common enterprise;

6. Is a trusted person to carry out the advocacy profession.

The Draft Law on Advocacy expands these requirements and alters several as well. For example, under Article 6 (1) the right to register in the register of advocates of the KCA requires that one:

- a. Has the ability to work;
- b. Is a permanent resident of Kosovo;
- c. Has finished Law Faculty or another superior law education, which is recognized by the Ministry of Education of Kosovo as superior education;
- d. Has completed at least one year trainee requirement in Advocacy, Court, or has a two year trainee experience in Public Administration;
- e. Has passed the bar exam [Jurisprudence Examination] in Kosovo;
- f. Has given a solemn oath;
- g. Has not been sentenced for criminal acts that would render him/her indecent for practicing the advocate profession, following the (KCA) Code of Professional Ethics;
- h. Has not been expelled or suspended from a judgeship position or from practicing the profession of advocate. In case of dismissal the request may be filed again following a period of five years, after the decision was taken;
- i. Has not engaged in activities that are not in compliance with the profession of the Advocate, in particular activities that negatively affect his professional independence.

Nearly all Kosovo advocates are graduates of the Law Faculty at the University of Pristina. There is a parallel university Law Faculty operating in northern Mitrovica with funding from Serbia, but no information was obtained about the equivalency, curriculum, or enrollment. For all practical purposes Pristina has the only law faculty in Kosovo. Some older advocates graduated from law faculties in Yugoslavia, most often in Macedonia and Croatia.

Students receive a Jurist degree from the Law Faculty. A post-Jurist degree, a two- year "*Magjistrature*" or Masters Degree can be obtained. The first year consists of lectures, and the second year is thesis work.

There is no night law school program. Students are permitted to attend law school part time.

The Law Faculty enrolls approximately 500 new students each year, but unofficial numbers may be higher. Respondents indicated that enrollment was fairly evenly divided by gender, but no statistics were available. Pristina attracts students from throughout the region. According to respondents Pristina "has a better reputation than Tirana." Students enrolled at University of Pristina from outside Kosovo are generally limited to ethnic Albanians. Many students from northern Albania attend University of Pristina to study because it is closer than Tirana. Ethnic-Albanian students also come from Macedonia, Montenegro, and southern Serbia.

Between 2000 and 2004 there were 1186 Law Faculty graduates; 757 men and 429 women. 29 were graduates from the Masters Degree program; 25 men and 4 women. Tuition is currently 130 Euros per year. The Ministry of Education has waived tuition for approximately 200 students based on financial hardship.

Most professors do not consider their salaries to be adequate. The range of salaries for a full time professor for all of the faculties is between 250 and 300 Euros per month. As salaries are low, most professors are employed in other full or part time employment positions outside the faculty.

While reforms at the Pristina Law Faculty have taken place, all respondents indicated that additional reforms are sorely needed. In particular, respondents highlighted the need to make education at the Law Faculty more oriented towards practical skills.

Factor 8: Preparation to Practice Law

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

Conclusion	Correlation: Negative
<p>The Pristina Law Faculty provides theoretical training, but students have insufficient practical and analytical skills training to practice law.</p>	

Analysis/Background:

The Law Faculty in Pristina was founded in 1961. In September 1991 all ethnic Albanian students and professors were expelled from the University of Pristina school premises, including the Law Faculty. As a result, for the next 9 years, ethnic Albanian students did not attend the Pristina Law Faculty, but instead studied in private homes in a shadow educational system, run by Kosovo Albanian professors and legal professionals. Ethnic Albanians inside and outside Kosovo supported this private system. The private home system of legal education was substandard and it is widely acknowledged that this generation received a less than adequate legal education under the trying circumstances of the period. Students had no difficulty in using the records from the private home education system to obtain credit when the Law Faculty was reopened to Albanian students. While Kosovo Albanians have now returned to the Law Faculty, Kosovo Serbs (largely confined to areas of northern Kosovo and to KFOR protected enclaves elsewhere) are unable to attend the Pristina Law Faculty because of the lack of security. Ethnic-Serbsians can attend the Law Faculty in northern Mitrovica or one of the former republics of the SFRY.

Under UNMIK administration, reforms at the Pristina Law Faculty began in 2000, but little significant improvement has occurred. Law Faculty respondents contend “too much, too soon” was demanded. Reform has incorporated the Bologna system⁸ into the curriculum at the Law Faculty. Although reforms incorporated a three-year law study plan, “It is not possible to finish in three years”. Some students are taking examinations during their fourth year and not attending lectures. Respondents frequently stated that “the reform has not done anything.”

⁸ The Bologna process is the process of creation of the European Higher Education Area (EHEA). The process started on June 19, 1999 and should be completed by 2010. The main objectives of the Bologna declaration are to increase the mobility and employability of European higher education graduates thus ensuring competitiveness of European higher education on the world scale. Issuing of the Joint European Diploma Supplement to all graduates and usage of a credit system (ECTS or compatible) are seen as the main tools for transparency.

The curriculum provides completion of 36 compulsory courses and 6 elective courses. Compulsory courses are: Constitutional Law I and II, The History of the State and the Law I and II, Bases of the Law Theory, Roman Law I (private law), Foreign Language I, II, III and IV, Economy I, Legal Sociology, Applicable Economy, Information Technology and Statistics, Administrative Law I, Civil Law I and II (Property), Criminal Law I, and II, Family Law I, Criminology I, Administrative Procedure, International Public Law, Criminal Investigation I, Due Process Rights I and II, Civil Procedure I and II, Criminal Procedure I and II, European Law, Finance and Financial Law, Penology I, Conflict of Law, Labor Law I, and Trade Law I. There are few elective courses. The curriculum incorporates recent developments in the law and includes teaching on UNMIK Regulations affecting Kosovo. Post-graduate courses include: Penal Law, Civil Law and Administrative Law.

Most courses are 3 or 4 hours a week. Two of those hours are intended to be professor-student consultations. Respondents complained that professors are not available for consultations and that generally they did not occur. There are no oral exams now, only written exams. Currently the Law Faculty is teaching up-to-date Kosovar law, including regulations and the Constitutional Framework and incorporating new laws into the curriculum.

No courses are offered in legal research and writing, professional responsibility/professional ethics or advocacy. The Law Faculty provides approximately 20 students the opportunity to go to court for about four to six weeks to assist the judges. This is only offered for experience as no course credit is earned, but the professors involved in this program take into account these extra efforts into other credits and grades. Generally, only the best or favored students have this opportunity.

Although no clinical law programs are currently offered, international donors have expressed an interest in beginning programs that would incorporate advocacy skills. The Kosovo Law Centre [hereinafter "KLC"], with the Pristina Law Faculty sponsored a project entitled "Practical Legal Clinics", between February 2004 and June 2004. The project focused on the application of theoretical legal knowledge in the context of development of practical legal abilities in specified segments of the law, and particularly in the fields of criminal law, civil law, and administrative law. The goal of the project was to reinforce students' practical abilities by combining theoretical knowledge with practical activities. Sessions were organized and held at the Pristina Law Faculty. During the clinics, experts organized mock trials, sessions on methodology of legal writing, and familiarized participants with practical forms, aspects and procedures.

ABA/CEELI in cooperation with the Pristina Law Faculty has developed a pilot clinical law program that will provide promising law students with hands-on experience and training in professional skills and values. A coordinator from the Law Faculty has been appointed and a project proposal has been accepted.

Respondents expressed a common sentiment that the Law Faculty provided theoretical training, but that students were not given sufficient practical and analytical skills training in preparation for the practice of law, including an absence of courses on ethics and advocacy skills. Most classes are taught in large lecture rooms with more than a hundred students. There is little, if any, interaction between professors and students.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

Conclusion	Correlation: Neutral
<p>A comprehensive Jurisprudence Examination is required for all legal professionals and grading is reasonably fair and transparent. An internship is required before taking the Jurisprudence Examination; and through assistance from international donors, additional practical training and preparation for practice is provided for some graduates during the internship.</p>	

Analysis/Background:

Internship

All legal professionals including prosecutors, judges, and advocates are required to pass the Jurisprudence Examination (see Factor 7). A pre-requisite for taking the Jurisprudence Examination is completion of an internship program. For example, under Article 2 of the Law on Jurisprudence Examination (Official Gazette of the Socialist Autonomous Province of Kosovo, No. 10/1977) to be eligible to take the Judicial Exam [Jurisprudence Examination] an individual must have “been working for one year in legal affairs in a regular court, public prosecutor’s office, public attorney’s office, in the court of associated labor, with the public attorney for self-management or in a lawyer’s office.” In addition, the Jurisprudence Examination is available to those individuals who have worked “two years dealing with legal affairs in other government organs, organizations of associated labor and other self-management organizations and communities.”

An internship is also required to take the Jurisprudence Examination. In 2002, ABA/CEELI and OSCE began sponsorship of a *Praktikant (internship)* program with the Kosovo Chamber of Advocates [hereinafter “KCA”]. Initial classes of 20 Law Faculty graduates were placed with advocates for a one-year program and OSCE established bi-monthly one-day training sessions emphasizing practical legal skills. Eighty Law Faculty graduates have been enrolled in the program since 2002. The program initially targeted graduates who had been denied an opportunity to serve an internship during the 1990s, but currently it includes recent, younger Law Faculty graduates. Upon completion of the program, graduates are registering to take the Jurisprudence Examination.

The *Praktikant* program has been successful in encouraging new advocates to enter the legal profession. The KCA has assumed responsibility for encouraging advocates to mentor new graduates and beginning in 2004 is providing stipends to *Praktikants*.

The KCA registers interns for compliance with the internship requirements. A KCA *Praktikant* Committee monitors the KCA-ABA/CEELI-OSCE *Praktikant* program and a KCA employee coordinates the work and training of *praktikants* with the committee and funders. In addition to the 80 graduates that have completed the KCA-ABA/CEELI-OSCE *Praktikant* program, a few other interns have been registered with the KCA and are fulfilling their internship requirement with work for organizations, in advocate offices and with governmental bodies.

Jurisprudence Examination

Under Article 5.3 of the Constitutional Framework the Jurisprudence Examination is one of the reserved powers.

The last Jurisprudence Examination for ethnic Albanian candidates was held in Kosovo in 1990. In 1992, Serbian authorities ceased administering the Jurisprudence Examination in Kosovo, thus further restricting access of ethnic-Albanian to the legal professions. In 2001 estimates were that approximately 780 graduates were qualified candidates. This included many judges, who had not been able to take the Jurisprudence Examination before, as well as potential prosecutors and advocates. UNMIK, OSCE and international NGOs with the Department of Judicial Affairs facilitated the resumption of the Jurisprudence Examination in Kosovo and on December 14, 2001 the first exam was held. OSCE and DJA established a program in accordance with European standards for questions and written tests. SOROS donated 2500 copies of a manual for preparation for the Jurisprudence Examination. OSCE provided training and ABA/CEELI provided translation of materials. Public Announcements were published inviting candidates to apply. In 2001, 1700 candidates applied; of which only 615 actually met the criteria. In 2003, there remained a backlog of 784 applicants. But as of January 2005, the OSCE reports there is no further backlog.

Established priorities for the initial Jurisprudence Examinations were:

- Candidates who graduated from a Law Faculty prior to 1995;
- Judicial candidates who had been dismissed for failure to have passed the Jurisprudence Examination;
- Minority candidates;
- Candidates who had not passed all parts of the Jurisprudence Examination prior to 1990;
- Candidates from municipalities with insufficient number of judges, prosecutors or advocates.

The Law on Jurisprudence Examination (Official Gazette of Socialist Autonomous Province of Kosovo, No.10/1977), and The Rule Book on Program and Way of Taking the Jurisprudence Examination (Official Gazette of Semi-Autonomous Province of Kosovo, No. 2/85) [hereinafter "Rulebook on the Jurisprudence Examination"], set forth the applicable rules and procedures for the Judicial/Bar Exam (Jurisprudence Examination). Both sets of regulations pre-date administration as a UN protectorate, but are apparently serving well as a structure for administering the Jurisprudence Examination.

A six-member Jurisprudence Examination Commission (with an additional deputy for each) was established in December 2001 to perform the task of administering the Jurisprudence Examination with technical/administrative support provided by the Department of Judicial Administration of Kosovo (DJA). OSCE and the U.S. Department of Justice jointly propose members and their deputies to sit on the Commission. Currently, the Commission consists of judges, law professors and advocates; all of whom have passed the Jurisprudence Examination. One member is a Bosnian, but Serbian minorities are not represented. Jurisprudence Examinations were originally scheduled approximately every two months.

The Jurisprudence Examination costs 150 Euros and waiver of the fee can be granted based on financial need. Examiners are paid 5 Euros for each written examination administered and 12 Euros for each candidate tested for the written examination.

The Jurisprudence Examination is comprised of both written and oral sections in accordance with Article 4 of the Law on Jurisprudence Examination and the Rule Book on the Jurisprudence Examination. The Jurisprudence Examination consists of 13 subjects. The same program of questions has been used since the initiation of the exam. The written examination covers criminal and civil law. In the criminal test, the candidate reviews a criminal case file and drafts

pleadings and decisions based on the material. A candidate must pass the written portion of the examination before taking the oral examination. The oral examination tests: Constitutional system and organization of the judiciary; Criminal law (material and procedural); Civil law (material and procedural), Family law and Inheritance law; Commercial law; Labor law; and Administrative law. The Jurisprudence Examination also addresses international human rights standards. As applicants are required to answer questions on the basis of current law, the examination is based on current material.

The OSCE provides Jurisprudence Examination training and assists candidates who reside outside the Pristina area. If a candidate passes at least 5 of the 7 parts of the Jurisprudence Examination, s/he only has to retake and pass the sections they failed. If the candidate fails more than two sections, s/he must take the entire Jurisprudence Examination again. There have been 3 or 4 attempts to appeal failed Jurisprudence Examinations. In these instances the entire Jurisprudence Examination Commission reviewed the case, but there have been no reversals so far. No right to appeal the Jurisprudence Examination Commission's decision exists, but the applicant can retake the examination.

As the potential questions for the oral examination portion are known and published beforehand, no unfair advantage can be gained by pre-disclosure of the examination. Grading could be a source of unfair treatment, but with multiple examiners grading each applicant, this should be minimal. No corruption was reported on the Jurisprudence Examination process, though some respondents felt that examiners gave preferential treatment to examinees that were related to friends or held high office. As the Jurisprudence Examination is subjective, accusations would be difficult to prove.

The oral portion of the Jurisprudence Examination is open to the public. Often an applicant's family or friends will attend, but most of the audience is composed of future applicants who want to see the process. Registration for the Jurisprudence Examination is primarily a mechanical process: the applicant submits documents. As long as the documents are in order, s/he is allowed to take the Jurisprudence Examination. As part of the Jurisprudence Examination, no information is collected on the quality of the internship. The number of applicants waiting to take the Jurisprudence Examination has been reduced significantly over the last two years. Applicants are invited to attend the OSCE training, but the training is not mandatory. Fewer applicants attempted the last exam, in part because the Jurisprudence Examination covered the new Criminal Codes, for which candidates were not yet prepared. Applicants should be able to take the Jurisprudence Examination within a few months of applying because the backlog is now resolved.

While statistics on the pass rate by gender and ethnicity are maintained, it is difficult to determine an accurate overall pass rate percentage with some applicants taking the Jurisprudence examination multiple times. However, 349 applicants have passed the Jurisprudence Examination since it was reinitiated in December 2003. Although most of the successful candidates took positions as judges or prosecutors, there was still a sizeable increase in new advocates.

KOSOVO JURISPRUDENCE EXAMINATION STATISTICS

Candidates	2001-2002	2003	2004
Total candidates	360	329	381
Passed exam	218	131	98
Women	83	30	27
Minority	10	4	3

An aggressive program to reach minority Serbian candidates has been undertaken by the international community that includes: translation of all materials, translation for bar review classes and administration of the Jurisprudence Examination in Serbian. Despite these efforts,

respondents indicated that minority Serbians experience social pressure within their community against participating in the Jurisprudence Examination. Respondents reported that the biggest problem with the Jurisprudence Examination was the backlog of applicants. Some respondents expressed concerns that oral examinations were graded too subjectively with favored applicants passing. However, the overall pass rate and ability to repeat the Jurisprudence Examination reduces the effect of any unfairness.

Factor 10: Licensing Body

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Conclusion	Correlation: Positive
Admission to the Kosovo Chamber of Advocates [hereinafter “KCA”] is self-regulated. A KCA decision on admission can be appealed within the KCA and is subject to administrative review, including application to the administration panel of the Kosovo Supreme Court.	

Analysis/Background:

After successfully passing the Jurisprudence Examination, an applicant submits a request for admission to the KCA. Article 36 of the Law on Advocacy and Other Legal Assistance gives the right to register as an advocate to anyone who fulfills the following conditions:

1. Is a Yugoslav citizen (The proposed Draft Law on Advocacy Article 6 substitutes “To be a permanent resident of Kosovo”);
2. Is able to work;
3. Has a law degree;
4. Has passed the Jurisprudence Examination, or has equivalent status;
5. Does not work in a common enterprise;
6. Is a trusted person to carry the advocates’ profession on;

However, restrictions are imposed. For example, a person under investigation or that has been convicted of criminal offences against the people and state, against humanity and international law, against the armed forces and for other criminal offences committed for his interest or low motives is not qualified to be an advocate. Law on Advocacy and Other Legal Assistance art. 36.

Under Article 40, if an applicant is denied admission, she/he can file an administrative action. Kosovo Judges and Prosecutors Council [hereinafter “KJPC”] decisions on dismissal of judges are provided to the judge involved but are not available to the public. This ban extends to the KCA, which has been criticized for extending membership to dismissed judges. Respondents explained that the KCA does not have a legal basis for denying membership to dismissed judges without the KJPC decision.

Initial registration with the KCA is 250 Euro and the monthly fees are 15 Euro (180 Euro annually). No respondents complained about membership costs.

As the KCA is non-governmental, admission to the KCA is removed from any governmental influence. Kosovars advocate strongly protect, and take great pride in, their independence from the government. There were no reports of the KCA denying membership based on established criteria.

Factor 11: Non-discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

Conclusion	Correlation: Neutral
Admission to the profession is not overtly discriminatory. However, ethnic minorities and women are underrepresented in the profession.	

Analysis/Background:

The Constitutional Framework provides that communities and their members be treated non-discriminately including the right to have information, education, and court proceedings in their own language. Equal employment opportunity and access to public services are guaranteed. *Id.* arts. 4.4, 4.5 and 4.6. No affirmative statements of non-discrimination exist in the laws or statutes governing admission to the legal profession.

Under Article 36 (1) of the Law on Advocacy and Other Legal Assistance, Yugoslav citizenship was a requirement for registering in the Register of Advocates of the Kosovo Chamber of Advocates [hereinafter “KCA”]. Under Article 6 (1) (b) of the Draft Law on Advocacy the requirement would be changed to being a “permanent resident of Kosovo.” Some respondents have stated that the residency requirement could unduly restrict the ability of Kosovo Serbs, Albanians or other ethnicities living outside of Kosovo to become registered as members of the KCA. Fluency in Albanian or Serbian is not a requirement and the Jurisprudence Examination and court proceedings must be translated for any non-Albanian speaker. There was no evidence that artificial barriers are created by the KCA to deny applicants the right to register based on ethnic origin, gender, etc.

The KCA has 346 members. Membership has rapidly increased in the last three years as a result of the international assistance in administering the Jurisprudence Examination and the successful implementation of the *Praktikant* program. Additionally, during the 1990s when many Albanian judges and government lawyers were denied employment, they chose to join the KCA.

The ethnic structure of the KCA is predominantly Albanian (281) with minority representation established by name as: 11 Serbians, 2 Bosnians, 1 Gorani and 5 Turks

The current gender analysis for the KCA is:

Total	Male	Female
346	323	23

The percentage of female advocates varies widely in the seven regions, from 11 registered in Pristina to 0 in three of the regions.

The Managing Board of the KCA established a commission for monitoring participation of women and minorities. The Commission is also responsible for a strategy to encourage women and minorities to join the KCA. The Commission consists of 3 females and among the 5 members, one is representative of the Kosovo Serbian minority.

Advocate respondents opined that the lower number of women registered as advocates was due to unwillingness to run a business and seek clients; that women would rather be employed as a judge, with the government or by a company; and that many men register as advocates because they cannot obtain regular employment elsewhere. A small, but strong community of women advocates exists, many of whom were forced from their employment in the 1990s and are successful and actively involved in the KCA.

III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Conclusion	Correlation: Neutral
Advocates practice law independently without limitation. The concept of free association of lawyers is only beginning to be developed and there is resistance to the formation of law firms.	

Analysis/Background:

Chapter 3, Articles 26-34 of the Law on Advocacy and Other Legal Assistance, states that advocates may establish and register common offices. However, Articles 5 and 6 of Chapter 3 have been interpreted as establishing a requirement for sole-practitioner status. Older advocates are of the opinion that it is illegal for them to practice law in any manner other than as sole-practitioners. The Draft Law on Advocacy more clearly defines law firm practice. The statutory interpretation is currently a subject of debate among advocates. Some advocates practice office sharing arrangements without benefit of any written agreement. Advocates perceive an advantage to practicing law in an office sharing arrangement, partnership or other form of association, but there is resistance from older lawyers and no models to follow. Currently, almost all advocates practice as sole-practitioners.

No legal or other barriers to opening a law office exist and many advocates operate a practice from homes or small offices near the courthouse. The common general concerns of advocate-respondents regarding private law practices were finances and establishing a client base. Many advocates have a computer for word processing, but no Internet connection. Generally, advocates do not have a landline telephone (mobile phones are widely used), reception area, staff, library or other amenities.

Younger lawyers expressed concern about opening their own offices without a good client base. As a result, they actively seek appointment as *ex officio* counsel for indigents.

Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Conclusion	Correlation: Negative
Access to legal resources is limited for the majority of advocates. Remuneration for most legal services remains low due to the economic situation.	

Analysis/Background:

Access to Resources

Lawyers have limited access to legal resources such as laws, regulations, case decisions, commentaries, UNMIK regulations and other pertinent information necessary to enable them to defend the interests of their clients. For advocates outside Pristina, availability of resources is worse. Most advocate offices have little if any library and no Internet or computer access, especially in small towns.

The international community has undertaken programs to provide better access to legal resources. ABA/CEELI has partnered with the OSCE, UNMIK, the Council of Europe and the Kosovo Law Centre [hereinafter “KLC”] to compile adopted legislation in the *Cumulative Index of United Nations Legal Materials Produced and Applied in Kosovo* [hereinafter “*Index*”] published in Albanian, English and Serbian. The *Index* is published quarterly and is widely distributed and used by advocates and others in the legal profession. Additionally, ABA/CEELI has published a Cumulative Summary Index on CD-ROM, which provides the full text of available UNMIK legal materials, the *Index* and selected international instruments that are widely used. The *Index* is useful in finding and applying UNMIK regulations and administrative directions, UN Security Council resolutions, statements and other documents. ABA/CEELI has also worked with the KLC on the Law Libraries Development project, which linked four law libraries in Kosovo, and made resources more widely accessible.

A number of international organizations are working on a publicly available web based database. Many laws and regulations are published on the Internet through international donors and UNMIK. Access to web-based materials requires an internet connection which many advocates do not have. The National Center for State Courts (NCSC), in collaboration with ABA/CEELI and other stakeholders, is designing a legal printing program to provide the legal community with all sources of applicable law in Kosovo.

Specializations

Chapter IX of the Statute of the Kosovo Chamber of Advocates [hereinafter “Statute of the KCA”] provides for recognition as a specialist in a particular field as provided for under Article 44 of the Law on Advocacy and Other Legal Assistance. Specializations are recognized in twelve different fields. However, no specialized advocates are registered. All respondents thought that specialization would be good, but were convinced that the current economic situation in Kosovo would not support specialization. A few highly visible, “famous” criminal defense advocates have no difficulty establishing a well-paying client base. The remainder of advocates does not have a sufficient client base in criminal law matters to support a specialization. Respondents clearly understand the importance of developing expertise in one area of law. Economic reality forces them to acknowledge that most advocates need to be proficient in many areas.

Remuneration and Fees

Articles 23 and 24 of the Law on Advocacy and Other Legal Assistance establish the right of advocates to remuneration in accordance with the Tariff established by the Executive Board of the Kosovo Chamber of Advocates. The most recent Tariff: For remuneration and compensation of lawyer's work of the Kosovo Chamber of Advocates [hereinafter "Tariff"] was adopted on 12 December 2002.

The Tariff provides that "the lawyer may conclude a contract with the relevant party regarding his or her compensation for a lower amount of money than the one set out in this Tariff, but not lower than 50 % of the established amount. In complicated cases according to the legal and factual base, the lawyer may request from the party a higher amount than the one set out in this Tariff, but not more than double the established amount." *Id.* art. 4. While a fee structure is established, advocates may also negotiate fees within the guidelines from 50% less to twice as much. Article 2 of the Tariff also provides that when performing work for foreigners, the advocate can charge in accordance with the tariff of the foreign country.

Under Article 99 par. 4 of the Provisional Criminal Procedure Code, remuneration and necessary expenses of court-appointed counsel (*ex officio* appointment), in criminal defense cases is from budgetary resources. UN Circulars (2000 and 2001) establish the amount of payment based on the level of the impending penalty, the length of court appearances and the number of persons represented by defense counsel. The maximum payment is currently 500 Euros per month for legal services, with provisions for additional expenses incurred (travel, food and lodging for travel to other municipalities). Whether lawyers receive sufficient remuneration for *ex officio* cases varies by the case defended, but is a source of many respondents' complaints. Advocates believe the amounts should be greater in more complex and lengthy cases. Respondents also complained about the bureaucratic requirements and delay in receiving payment. However, respondents stated that the historic delay in payment has recently improved.

The financial success of lawyers is difficult to determine. Some well-known lawyers command high fees and many lawyers struggle financially. *Ex officio* lawyers are not paid adequately to assure a competent independent defense. Many advocates are dependent on the appointment system for income, especially when beginning a practice.

The economic situation in Kosovo is the most significant factor affecting access to legal resources and remuneration of advocates.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

Conclusion	Correlation: Neutral
<p>International donor organizations have been the primary providers for continuing legal education [hereinafter "CLE"]. The Kosovo Chamber of Advocates [hereinafter "KCA"] has established a viable continuing legal education committee [hereinafter "CLE Committee"] that is working on CLE projects and requirements.</p>	

Analysis/Background:

Article 4 (3) of the Statute of the Kosovo Chamber of Advocates [hereinafter "Statute of the KCA"] states that, one of the special tasks of the KCA is, "To build-up permanently the professional level of both lawyers and professional associates." This sentiment is carried through in Article 11 of



the KCA Code of Ethics, which states that “the lawyer should continuously work to expand his knowledge.”

In a legal environment that has experienced a multitude of changes to regulations and laws over the last four years, advocates are challenged by the need to stay informed of changes. The international community has worked to ensure that legal professionals are educated on international and domestic laws, as well as practical professional skills.

The KCA recognized the need to institutionalize CLE and is actively involved in the process. The KCA co-sponsors CLE events with international donors and has developed knowledge and skills for sustainability of the CLE program. With assistance from ABA/CEELI, the KCA established a CLE Committee that has developed a member-oriented in-house continuing education program, CLE course curriculum, and internal guidelines. The CLE Committee submitted a proposal for mandatory CLE to the 2004 Assembly (annual meeting). The proposal was not adopted. However, advocates are aware of the necessity for CLE and actively participate in programs.

The KCA sponsored numerous CLE seminars in the last year with donor assistance from ABA/CEELI, the Criminal Defense Resource Centre [hereinafter “CDRC”], and the Council of Europe. Most recent CLE included training on the newly adopted Provisional Criminal Code and Provisional Criminal Procedure Code. The OSCE provides training for *praktikants* two days a month. *Praktikant* respondents report that the training is excellent and includes both substantive and practical skill training. The OSCE also provides training for the Jurisprudence Examination. The CLE Committee is also working with OSCE to organize CLE sessions and trainings, particularly for newly licensed members of KCA. The Criminal Defense Resource Centre [hereinafter “CDRC”] an NGO supported by the U.S. Department of State, U.S. Department of Justice, OSCE and ABA/CEELI provides assistance in cases involving international legal standards. CDRC assists defense counsel in protecting the rights of the accused by working directly with advocates. CDRC also serves as a resource center for defense counsel by providing access to international legal instruments and research materials, and works with the KCA and others to develop training and seminars

Most advocates live within a few hours drive of Pristina, but travel is sometimes difficult due to road and traffic conditions. CLE events are offered throughout Kosovo but are most heavily attended when located in Pristina, because of the proximity and large population.

The new Criminal Codes create extensive requirements for defense counsel. Additional practical skill training is necessary to meet the new demands. Respondents reported a strong interest in CLE and are eager to attend. Both advocates and providers report that CLE is a high-priority need, and that more interactive teaching and greater participation of attendees is necessary. Some respondents complain that the CLE provided by KCA is given only to advocates and is not available to law graduates acting as jurists privately and with business. Thus, CLE is not universally available to law graduates.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

<i>Conclusion</i>	<i>Correlation: Negative</i>
Neither ethnic minorities nor women are adequately represented in the profession.	

Analysis/Background:

The Constitutional Framework provides for equal treatment of members of the community (see Factor 11). For example, Article 3.2 requires the Provisional Institutions for Self-Governance [hereinafter “PISG”] to implement internationally recognized human rights, standards, and fundamental freedoms, including, but not limited to, the rights and freedoms set forth in The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The European Charter for Regional or Minority Languages, and the Council of Europe’s Framework Convention for the Protection of National Minorities among others. PISG is responsible for “good governance, human rights and equal opportunity”. Constitutional Framework art. 5.2.r. However, the Special Representative of the UN Secretary General [hereinafter “SRSG”] retains the power for “full authority to ensure that the rights and interests of communities are protected.” *Id.* art. 8.1.a. Both PISG and SRSG recognize the importance of protecting minorities and providing equal opportunities.

The ethnic makeup of the Kosovo population is:

Ethnic groups	
Kosovo Albanians	88%
Kosovo Serbs	7%
Other ethnic groups	5%

Source: Publication ["Kosovo and its Population"](http://www.sok-kosovo.org/pdf/population/Kosovo_and_its_population.pdf) revised version (PDF-format, 505) at http://www.sok-kosovo.org/pdf/population/Kosovo_and_its_population.pdf

Religion and ethnicity in Kosovo are closely intertwined, as ethnic Serbs identify with the Serbian Orthodox Church and the majority of ethnic Albanians are Muslim. Ethnic Serbs are largely confined to areas of northern Kosovo and to KFOR-protected enclaves. Since the end of hostilities in 1999, the Serbian population has decreased. International respondents stressed the need for increased participation in the legal profession by Kosovo Serbs as indicated by efforts undertaken for the Jurisprudence Examination (see Factor 9). Ethnic participation is a practical issue with serious security considerations for the ethnic Serb minority.

Although the Kosovo Chamber of Advocates [hereinafter “KCA”] does not maintain records based on ethnicities, a review of the records by names suggests the following:

Ethnic Group	
Albanian	320
Serbian	13
Other Minorities	13

While the percentage of advocates by ethnic group roughly coincides with that of the overall population, there are insufficient ethnic Serbian advocates for *ex officio* representation of clients. Only two ethnic Serbian advocates work in North Mitrovica, one of whom limits his work to civil practice. The Provisional Criminal Procedure Code requires separate defense counsel for each defendant in multiple defendant cases. Respondents anticipate difficulty in complying with the provisions due to the shortage of ethnic Serbian advocates.

Although the KCA maintains no official statistics on gender, a review of the names indicates that 6% are women (see Factor 11). Women represented approximately 36% of the law faculty graduates between January 2000 and May 2004 (see Factor 7). After graduation, they often choose a legal profession path other than advocacy (prosecutorial, judicial, in-house counsel, legal consultant).

All female respondents adamantly maintained that there was no gender discrimination in the legal profession, but admitted that it was more difficult for women to start a practice, attract clients and maintain an office. Gender representation is not acknowledged as an issue within the profession. No programs actively seek to include more women.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

Conclusion	Correlation: Negative
A Code of Professional Ethics and Conduct exists, but is substantially disregarded in practice. The public is critical of the perceived lack of ethics by advocates.	

Analysis/Background:

Article 9 of the Law on Advocacy and Other Legal Assistance grants the Kosovo Chamber of Advocates [hereinafter “KCA”] the authority to issue a Code of Professional Ethics, including rules governing conduct and moral standards. Under Article 14, advocates have a duty to honestly provide legal assistance in accordance with the Code of Professional Ethics and to uphold the law. Upon admission to the KCA, advocates must take an oath to respect the KCA Code of Ethics. *Id.* art. 43.

Article 5 (4) of the Statute of the KCA empowers the KCA to develop and advance the ethics of advocacy. The Executive Board is responsible for drafting a professional code of ethics. The draft is submitted to the Assembly for approval.

In April 2004, with technical assistance from ABA/CEELI, the KCA adopted a revised KCA Code of Ethics. The KCA Code of Ethics is comprehensive and provides specific guidance for advocates on principles of conduct in various areas, including:

- Confidentiality: Requirements for maintaining confidentiality after representation ceases, and with specific enumerated exceptions (see Factor 4).
- Relationship with Client: An affirmative duty to provide assistance; recommendation that a contract for services be used when either client or advocate requests; conflict of interest provisions including enumeration of prohibited conflicts; and disclosure of conflict or refusal to represent, prohibition against abandonment of client.
- Criminal defense representation: An affirmative duty to represent defendants.
- Bar association: A duty to KCA and other advocates.
- Courts and administrative bodies: Duty to maintain respect and honest representation of the law and facts.
- Compensation: Requirement to notify clients of costs, avoiding unnecessary expenses and provide legal aid.
- Opposing counsel: Duty to behave with respect and dignity; not take advantage of counsel; and not participate in *ex parte* communication with opposing counsel, client or the court.

- Other advocates: Duty to maintain collegiality and professionalism.
- *Praktikants*: Duty to accept interns, mentor, and assist in teaching skills.
- Legal assistance to indigents: An affirmative duty to represent indigents.
- Management: Requirement to maintain separate client funds, and to behave honestly and with integrity.
- CLE and Professional Enhancement: Continuation of education in the field of law and maintenance of high reputation
- Advertising: Rules regarding advertising and soliciting explicitly defined.

Article 13 of the KCA Code of Ethics provides that infringement of the professional rules is a breach of duty.

The Provisional Criminal Procedure Code also contains requirements for counsel, many of which provide for referring violations to the KCA including:

- The court may dismiss appointed defense counsel who is not performing his duties properly (at request or with consent of defendant). The Chamber of Advocates will be informed of the dismissal. *Id.* art. 75 (4).
- Defense counsel is prohibited from prolonging the criminal proceeding. The court may impose a fine of up to 250 Euros and the Chamber of Advocates will be informed. *Id.* arts. 146 (1-2) and 308 (2).
- Defense counsel is prohibited from insulting or offending the court or an individual participating in the proceedings. The court may impose a fine up to 250 Euros and the Chamber of Advocates will be informed. *Id.* art. 85 (1).
- Defense counsel is prohibited from disturbing order or failing to comply with the directions of the court. The court shall warn counsel first and if the warning is of no avail, the panel may impose a fine up to 1,000 Euros. If counsel continues to be disruptive, the trial panel may deny counsel the right to represent the client at the main trial and the Chamber of Advocates will be notified. *Id.* arts. 336 (1, 3 and 6) and 337.
- If defense counsel commits a criminal offence while court is in session, upon an oral charge by the prosecutor, the court may recess the main trial and try the criminal offence or may consider the offense after concluding the main trial. *Id.* art. 338 (2).
- Conflict of interest-defendants cannot be represented by:
 - a. The injured party (or spouse or extramarital partner) or the prosecutor (or anyone related to the prosecutor). *Id.* art. 72 (1);
 - b. A person who has been summoned to the main trial as a witness. *Id.* art. 72 (2);
 - c. A person who has acted as a judge or public prosecutor in the same case. *Id.* art. 72 (3).

The KCA Code of Ethics is legally sound, but is substantially disregarded in practice. Ethics and professional responsibility are not taught in the Law Faculty and advocates receive little training in CLE. People that work in courts most frequently cited instances in which defense counsel were ill prepared, disruptive or disrespectful of witnesses. Usually, the court warns offending counsel and the behavior ceases. Occasionally, cases are referred to the KCA. When cases have been referred, no further action against the advocates has been reported by the KCA. It does not appear that either the Law on Advocacy and Other Legal Assistance nor the Draft Law on Advocacy make subject to the KCA Code of Ethics those law graduates that have not passed the Jurisprudence Examination and are working in the legal profession privately as jurists.

In the highly publicized “Llapi Case” (The Public Prosecutor’s Office vs. Latif Gashi, Rustem Mustafa, Naim Kadriu and Nazif Mehmeti), the OSCE Legal System Monitoring Section, which is part of its Department of Human Rights and Rule of Law, reported on the incident of two defense counsel giving a summary of non-public session testimony to the press on two separate occasions. This occurred despite the court placing a “gag order” against counsel talking to the press. No action was taken against the advocates.⁹ Respondents universally report that there is a lack of public confidence in the legal profession.

Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

Conclusion	Correlation: Negative
Advocates are subject to disciplinary proceedings by the Kosovo Chamber of Advocates [hereinafter “KCA”], but discipline is rarely imposed.	

Analysis/Background:

Discipline of advocates is directly addressed in the Draft Law on Advocacy. Under Article 18 (1) “an Advocate is subject to administrative disciplinary responsibility, if he/she acts against the law, professional ethics, or other rules envisaged by statute or regulations of the Chamber of Advocates [KCA] and if he/she does not respect decisions of the Chamber of Advocates”

The most severe punishment is removal from the Register of Advocates of the KCA and removal of the right to practice law as an advocate. However, there is a general scheme for discipline under Article 18 (4) of the Draft Law on Advocacy for less serious infractions or violations. These include:

- Notice
- Reprimand
- Fine

Under Article 118 of the Statute of the KCA potential violations include:

⁹ See Case Report the “Llapi Case” and Reviews of the Criminal Justice System at www.osce.org/kosovo/reports.

- Commission of criminal acts;
- Dishonestly performing advocacy or representing parties;
- Breach of advocacy confidentiality;
- Charging in excess of the Tariff;
- Solicitation of clients;
- Aiding quasi-notary functions;
- Maintenance of another office outside the main office;
- Failure to fulfill financial obligations to the KCA;
- Abuse of trust;
- Failure to return documents to client.

Articles 99-150 set out in detail the procedures to be followed in a disciplinary proceeding. A disciplinary complaint is initiated with the Disciplinary Prosecutor (elected by the Assembly of the KCA) on request of the Executive Council, President of the Chamber, President of Regional Bar or Department of Justice (DOJ does not currently exist). Direct complaints by clients, judges, or the public are not provided for in the Statute of the KCA, but are accepted by the KCA. The disciplinary process consists of a private hearing with multiple appeals within the KCA. The accused advocate can also appeal by an administrative procedure in the courts.

The disciplinary procedure is well-defined and adequately protects the accused advocate with: adequate notice of the charges; right to counsel; right to be heard; adequate time for preparation of a defense; right to a fair and timely hearing; and, right to appeal. *Id.* arts. 103-112. However, no required procedure exists for maintaining records of disciplinary complaints and no statistics on discipline were available. The procedure for disciplinary action is adequate, but overly complicated and cumbersome for a small bar association.

No instances of inappropriate actions being taken against an advocate were reported. No indication that any disciplinary action had been taken against advocates exists. Respondents indicated that there may be ten cases pending, but that most, if not all, were subject to dismissal based on lack of timeliness (the statute of limitation under Article 146 is commencement of disciplinary procedure for minor violations within six months and otherwise, one year).

Kosovo advocates face a conundrum. Advocates value independence, but the close-knit society of Kosovo makes self-regulation and enforcement of disciplinary measures difficult. There are 300 total advocates and this number will probably increase in the next few years by an annual rate of 5-10%. However, the increase will not alleviate the difficulties inherent in self-regulation in the small community.

The Ethics and Disciplinary Committee of the KCA actively sought changes in the Statute of the KCA in 2004, which would have simplified the procedure. The amendments were not presented to the Assembly of the KCA at its annual meeting because of the desire to wait for enactment of the Draft Law on Advocacy. However, even a simplified disciplinary procedure will not overcome the lack of disciplinary action, as noted above. Some respondents indicated that most of the complaints were based on violations of the KCA's Tariff: for remuneration and compensation of lawyer's work. Many advocates criticized others for engaging in businesses prohibited for advocates (most notably, translations and copying). Some respondents believed that judges

should not refer cases involving courtroom behavior to the Disciplinary Court because that should be controlled by sanctions. Furthermore, some concern existed regarding complaints motivated by personal vendettas. At least some respondents stated that discipline should be the responsibility of the Supreme Court.

IV. Legal Services

Factor 18: Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Conclusion	Correlation: Neutral
Advocates are distributed throughout the Kosovo, but some areas are underserved due to an inadequate number of advocates.	

Analysis/Background:

The 300 registered advocates in Kosovo are distributed throughout seven regions as follows:

Pristina	135
Ferizaj	19
Peja	44
Gjakova	26
Prizren	58
Mitrovica	23
Gjilan	41

Practicing advocates per region (bar community) are distributed throughout Kosovo in reasonable proportion to the population distribution. Advocates are particularly concentrated in Pristina, but all regions are represented. Kosovo's land mass is only 10887 sq. kilometers and Pristina advocates can freely practice throughout the region. Advocates often handle cases outside their resident region.

Respondents reported that there is a problem in the northern region of Kosovo with obtaining *ex officio* representation for non-ethnic Albanian defendants. The northern region areas of Leposavic and Zubin Potok are underserved. Only three Serbian advocates are available, one of which is based in Belgrade.

Advocate respondents expressed unanimous support for more advocates, particularly in the northern area of Kosovo. The population of Kosovo is estimated to be 1.9 million and there is a shortage of advocates in some regions. Criminal cases account for a significant portion of lawyers' income. Little civil or commercial work is available, because there are few enterprises requiring legal work. Unemployment statistics are unreliable, but unemployment of the population is generally given to be 50-60%. The economic situation, and its impact on the state of the legal profession, cannot be overemphasized.

“Far from improving, within the last year Kosovo’s economy has regressed. As the size of the expatriate staff declines, the service industry that brought into Kosovo possibly 1 billion Euros annually at its height, shrinks. Even Kosovo’s present low level of GDP is unsustainable. In 2002, 50 per cent was accounted for by foreign assistance, 30 percent by remittances from the Diaspora—both sources now fatigued and in decline—and only 20 per cent by domestically generated economic activity.” “Collapse in Kosovo”, 22 April 2004, ICG.

Initial Jurisprudence Examinations given after the war were designed to give priority to minorities and judges that had previously been denied the opportunity to take the Jurisprudence Examination (see Factor 9). Based on law faculty graduation rates and Jurisprudence Examination results, more lawyers will be admitted to the profession in the next few years. Due to the state of the economy, it is unclear how additional lawyers can earn a reasonable living.

International organizations are raising issues of concern to a minority population, with particular attention to violations of human rights, citizenship rights for refugees and displaced persons, and property rights (see Factor 19), all of which demonstrate the need for adequate access to legal services.

Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty; have effective access to legal services.

Conclusion	Correlation: Neutral
Legal services are provided to indigent criminal defendants, although the quality of the representation is often inadequate. International donor organizations, directly or indirectly, provide representation for indigents in non-criminal matters.	

Analysis/Background:

Criminal Legal Services (*ex officio* appointments)

Article 12 (4) of the Provisional Criminal Procedure Code has a general requirement that “if the interests of justice so require and if the defendant has insufficient means to pay for legal assistance . . . an independent defense counsel having the experience and competence commensurate with the nature of the offence shall be appointed for the defendant on his or her request and paid from budgetary resources.”

In a mandatory defense case under Article 73 (1) (1-4), free criminal defense representation must be provided for the accused, if defendant does not engage defense counsel.

Under Article 73 (1) (1-4), mandatory defense is required:

1. From the first examination, when the defendant is mute, deaf, or displays signs of mental disorder or disability and is, therefore, incapable of effectively defending himself or herself;
2. At hearings on detention on remand and throughout the time when he or she is in detention on remand;
3. From the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least eight years; and

4. For proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of long-term imprisonment has been imposed.

Under Article 74 (1) (1-2), at the defendant's request, counsel shall be appointed at public expense if:

1. The proceedings are being conducted for a criminal offence punishable by imprisonment of at least eight years; or
2. The defendant is financially unable to pay the cost of his/her defense and the court or competent authority conducting the proceedings in the pre-trial phase determines that appointment of defense counsel at public expense is required by the interests of justice.

The Department of Judicial Administration directly reimburses advocates for legal assistance (*ex officio* representation) in criminal cases. In 2002, total reimbursements were 116,613 Euro. However, it is difficult to meaningfully assess the adequacy of this level of funding. Concerns were raised by respondents about ensuring the appointment of advocates and the terms and conditions under which advocates work with defendants and detainees. Advocates are generally reluctant to provide *ex officio* representation.

Ensuring payment for *ex officio* counsel has historically been a problem (see Factor 13). Respondents report that the UN circular on *ex officio* representation has been interpreted by the UN to limit payment to 500 Euros per month no matter how many cases are handled, or how many clients are represented, by each advocate. Except for the northern sections of Kosovo and Mitrovica, where few Serbian advocates are available (see Factor 18), there is apparently no shortage of counsel available to appoint.

The competence of defense counsel is a serious problem. Respondents reported that advocates were poorly prepared to defend clients. The most egregious areas of incompetence reported by OSCE's Legal System Monitoring Section (part of its Department of Human Rights and Rule of Law) and respondents included:

- Inadequate preparation and failure to seek adequate time to prepare.
- Failure to object to potentially inadmissible evidence (including evidence obtained by torture or ill treatment).
- Failure to object to violations of rights (i.e. failure to inform suspect of charges, right to counsel)

With increased responsibilities under the Provisional Criminal Procedure Code, the lack of effective defense counsel may be exacerbated.

Civil Legal Services

A Legal Aid project funded by the European Union through the European Agency for Reconstruction [hereinafter "EAR"] provides representation for indigent clients. The Legal Aid project is implemented by the Kosovo Chamber of Advocates [hereinafter "KCA"] and three NGOs that provide services at thirty-one legal aid desks in seven regional offices in Pristina, Ferizaj, Peja, Prizren, Mitrovica, Gjilan and Gjakova. The Legal Aid project was funded for two years (2002-2004) at 1,650,000 Euros. A total of 8010 cases were processed during the first year. All advocates registered with the KCA may participate in the Legal Aid project. In the first year of the project, 179 advocates were engaged. Advocates are paid according to the Tariff.

Only advocates represent the clients before the court. NGO jurists at the legal aid desks provide all other services (services before administrative authorities, mediation, and legal counsel not requiring court appearances).

Legal services were provided to ethnic groups as follows:

Albanian	87.48%
Serbian	7, 27%
Roma	2.85%
Muslim (Slavic)	0.90%
Bosnian	0.85%
Turkish	0.36%
Gorani	0.11%
Other	0,19%

Other legal services are provided by a variety of organizations, usually through local NGOs, including the Center for Protection of Children and Human Rights (emphasis on victims of domestic violence) and Kodi in Peja (Bosnian women’s rights).

Integrated Legal Aid System

EAR published the “Overall Study on A Legal Aid System for Kosovo, Integrated Legal Aid System,” which recommends combining both criminal and civil cases within a single, unified, comprehensive and integrated system (Project No. 01/KOSo1/05/002). A unified system would require changes in both the legal and institutional frameworks of the current systems. However, the sustainability of the current systems is in jeopardy unless some major changes are undertaken.

Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

<i>Conclusion</i>	<i>Correlation: Negative</i>
Alternatives to litigation are not generally available and advice as to alternative dispute resolution [hereinafter “ADR”] is rarely provided.	

Analysis/Background:

The Provisional Criminal Procedure Code, Article 228 (1-6) provides a new mechanism for the public prosecutor to utilize mediation. Under Article 228 (1) “the public prosecutor may refer the criminal report on a criminal offense punishable by a fine or by imprisonment of up to three years for mediation. Before doing so, the public prosecutor shall take account of the type and nature of the act, the circumstances in which it was committed, the personality of the perpetrator and his or her prior convictions for the same criminal offences, as well as his or her degree of criminal liability.” Article 228 (2) states that “the mediation shall be conducted by an independent mediator...” Under Article 228 (3) an agreement may only be reached through mediation with the consent of the defendant and the injured party. Under Article 228 (4) “...the length of time for reaching an agreement may not exceed three months.” Under Article 228 (5) if mediation leads to the dismissal of a criminal report “the injured party shall not have the right to undertake or continue prosecution under Article 62 paragraph 2 and 4 of the present Code. The mediator shall inform the injured party of the loss of this right before the injured party consents to this

agreement.” Finally, under Article 228 (6) “an Administrative Direction shall set forth detailed procedures on conducting mediation.”

At the time of this report, the mechanism for establishing the mediation process was not established.

Article 33 of the KCA Code of Ethics states that “[t]he lawyer should, if it is in the interest of the party, try to reconcile parties in the dispute without starting the judicial procedure or another procedure, and during the entire procedure he must try to solve the dispute with agreement between parties.”

Partners Kosovo [hereinafter “Partners”], a local NGO, was established in 2001 through assistance of Partners for Democratic Change [hereinafter “PDC”], with funding from USAID, Soros, and others. Partners is currently working on draft legislation for mediation, although mediation legislation has previously been unsuccessfully presented to the Parliament. Partners has trained over 44 mediators and mediated over 270 cases; mostly family disputes, “blood feuds”, property and land disputes and inter-ethnic disputes. Most of the mediators are not lawyers. Partners has also promoted Public Awareness programs on television, radio and newspapers.

The Ombudsperson Institution in Kosovo [hereinafter “OIK”] is an independent institution established by UNMIK Regulation 2000/38 to deal with complaints concerning alleged human rights violations or abuse of authority on the part of the interim civil administration, or any emerging central or local institution. The OIK has mediated disputes between the Bosnian community and UNMIK officials (regarding general medical schooling), property issues involving the government, neighborhoods, and other cases.

Respondents reported that mediation has a strong tradition in Kosovo, which has assisted with acceptance of mediation as an alternative to the legal system. However, most advocates were unaware of programs and did not actively refer cases to mediation. Respondents suggested that advocates were not familiar with ADR, and that they were also fearful of losing a potential source of revenue if cases were mediated rather than taken to trial.

There is currently no arbitration legislation in Kosovo. In addition, no ADR training exists in the Law Faculty curriculum.

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

Conclusion	Correlation: Positive
<p>The Kosovo Chamber of Advocates [hereinafter “KCA”] is self-governing, democratic and independent from state authorities. No other professional associations have been developed.</p>	

Analysis/Background:

The Kosovo Parliament established the KCA upon adoption of the Law on Advocacy and Other Legal Assistance. The first advocate was registered in 1974. Prior to that time, Kosovo advocates were registered in Belgrade, Serbia. After UNMIK Interim Administration became effective in June 1999, judicial institutions were reestablished in Kosovo (pursuant to UNMIK Regulation 1999/24 on the Law Applicable in Kosovo). International organizations working in Kosovo, (OSCE, ABA/CEELI, EAR, and the European Council) re-established the KCA after the war and the first Assembly was held in 1999. In order to practice as an advocate, one must be a member of the KCA.

The relationship between the KCA and member advocates is addressed in Articles 4-10 of the Law on Advocacy and Other Legal Assistance. Under Article 4 “[t]he advocates and other authorized persons to provide legal assistance are independent in performing their function”. Under Article 5 “[a]dvocacy is a social independent service. Independence of advocacy is especially observed in: accomplishing the advocate’s functions independently, as independent advocate’s association, organizing the advocates in the Chamber of Advocates [KCA], that is an independent advocate’s association...” Under Article 6 “[a]dvocacy as an independent profession is carried out by the advocates”. Specific reference to the independence and legal status of the KCA is also contained in Article 7, which states that “Advocates having their premises within SAP Kosovo (see Factor 7) are members of the Chamber of Advocates that is an independent, professional, and self-governed organization... The Chamber of Advocates is recognized as a legal person.” Articles 8-10 provide a general outline for the organization and responsibilities of the KCA.

The Statute of the KCA contains the detailed procedures for the organization and structure of the KCA. For example, Article 60 (1-9) lists the bodies of the bar. These are: the Assembly of the Bar, the Executive Council of the Bar, the President of the Bar, the Supervisory Council of the Bar, the Appeal Assembly Commission, the First and Second Instance Disciplinary Prosecutor, the Disciplinary Court, the Higher Disciplinary Court, and the Lawyer’s Regional Meeting. Articles 62-116 detail the function, duties and specific details relating to each of these bodies.

The KCA’s governing structure conforms to the standards established by the Law on Advocacy and Other Legal Assistance as well as the standards contained in the Draft Law on Advocacy. In particular, the Assembly of the Bar (all registered members) meets on an annual basis (Article 62), but the Executive Council of the Bar composed of the President, former President and seven members from the Lawyer’s Regional Meeting (Article 75) as representatives conducts the regular business of the KCA. Direct participation of advocates is through their elected representative to the Executive Council of the Bar. The KCA has also established a number of committees and a number of advocates participate through committees (CLE, *Praktikant*, Ethics, and Disciplinary) and in various other informal groups. The President of the Bar is elected for a one-year term (Article 87), but has the right to be re-elected for another term of office. The KCA is an independent organization and interacts with the government only through the Jurisprudence Examination process, (see Factor 9). There is no funding from public sources, but the KCA has received considerable funding of programs and projects from the international community.

The KCA reported that there were 314 in attendance at the April 2004 annual meeting, which included more than 250 members, plus guests from the international community and the judiciary. Since the annual meeting, 9 new advocates have passed the Jurisprudence Examination and have been admitted. 4 *praktikants* scheduled to take the Jurisprudence Examination also attended the annual meeting.

Respondents were varied in their assessment of the KCA. Some reported that they were not involved in the nominations for leadership positions before the Assembly meeting, resulting in self selection of existing leadership. Others were disappointed that discipline was not better regulated, and many desired more reform of the Law on Advocacy and Other Legal Assistance to reflect European standards (such as support for establishing law firms). On the other hand, many advocates recognized the strong role the KCA provided for advocates in the last four years and

the efforts by the leadership to cooperate with international organizations to improve the education and involvement of advocates.

Under very difficult circumstances, the KCA has developed into a sustainable organization.

Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

Conclusion	Correlation: Neutral
<p>The Kosovo Chamber of Advocates [hereinafter “KCA”] actively promotes the interests and independence of advocates, provides cooperation with international providers for continuing legal education [hereinafter “CLE”] and other opportunities, but does not provide adequate implementation of professional standards.</p>	

Analysis/Background:

The Law on Advocacy and Other Legal Assistance contains general language on the duty of the KCA to promote the interest of advocates, establish ethics and discipline and encourage education for its members. Article 5 states that the KCA enacts “general acts, in accordance with the law, on the functioning of the Chamber of Advocates [KCA] and its bodies and on the conduct of the advocates in the course of their duties.” Article 8 states that the KCA “...approves its own statute and other general acts important to the conduct of advocates and the promotion of advocacy”. Under Article 9 the KCA is given authority to issue “the Code of Professional Ethics for the advocates [KCA Code of Ethics]. This Code shall include general rules governing the conduct of advocates in the course of their duty, basic moral standards and other norms in relation with the persons, whose judicial interest they represent, and social community, advocate’s responsibility standards and other rules that insure an honest and competent accomplishment of the duty.” The Law on Advocacy and Other Legal Assistance does not mention CLE specifically; however, the KCA and its members understand that the KCA has a duty to promote advocates’ interests, education and discipline.

The Draft Law on Advocacy details disciplinary measures for advocates who fail to adhere to the statutes and rules of the KCA (see Factor 17). For example, under Article 18 (5) “[i]f an advocate acts in contradiction with his obligations envisaged by this law or other acts of the Chamber of Advocates,” an advocate can be sanctioned accordingly, including the possibility of a fine and suspension or revocation of their license to practice (Articles 18 and 19).

The Statute of the KCA addresses the role and duty of the KCA to promote the interests and independence of the advocacy profession, to establish professional standards, and provide educational and other opportunities to members. Article 4 (1-9) provides that the KCA has the following special tasks, including:

1. To preserve its authority and autonomy of advocacy and to ensure the conditions for regular exercise of lawyer's activities;
2. To supervise lawyers, joint offices of advocacy, as well as some other forms of relations between lawyers for the protection of rights and interests of parties;
3. To build up permanently the professional level of lawyers and professional assistants and to establish various forms of coordination with courts, administrative bodies, scientific institutions, law faculties, international organizations and institutions which are important to the fulfillment of this task;
4. To develop and advance the ethics of advocacy;
5. To analyze and study key phenomena for the purpose of advancing and protecting the rights of citizens and legal entities;
6. To inform local competent bodies of measures that need to be undertaken for the advancement of advocacy and the rights of citizens and legal entities;
7. To manage finances and other interests of the profession;
8. To protect of the rights and status of retired lawyers and employees in the advocacy offices; and
9. To coordinate with other bar associations and various national and international institutions.

The role of the Lawyer's Regional Meeting in promoting advocacy is addressed under Article 84 (1-9), which states that the Lawyer's Regional Meeting must:

- Uphold and advance the lawyer's authority and advocacy as an independent service;
- Protect the rights and interests of lawyers and professional assistants;
- Support the professional practice of lawyers and professional assistants;
- Promote lawyer's ethics; and
- Collaborate with courts, state bodies, and organizations for the professional growth of lawyers and professional assistants.

Articles 99-116 address discipline of advocates and the role of the Disciplinary Prosecutor, the Disciplinary Court and the Disciplinary High Court. Articles 117-125 address actual disciplinary measures. Articles 126-150 address the procedure for initiating disciplinary measures and the procedure of the Disciplinary Court.

Article 151 provides that "[t]he Bar maintains its own library. All lawyers and professional assistants, registered in appropriate registers of the Bar have the right to use the library." The library contains professional literature published in Kosovo, Albania, Croatia, Serbia, Bosnia and Herzegovina, France and the USA. Chapter X, Article 163 provides that "[t]he Bar Association [KCA] issues the bulletin. The bulletin is published every 6 (six) months and all lawyers and professional assistants of the Bar receive it." The KCA published its first Bulletin in March 2004.

The KCA has promoted the interests of its members, in large part, by developing an excellent working relationship with the myriad of international organizations that provide Rule of Law programs in Kosovo. The KCA has seized opportunities to work with organizations to revise and

support amendments to the Law on Advocacy and Other Legal Assistance and to a lesser extent, other legislation.

The KCA has made positive efforts in other areas:

- The KCA has cooperated with EAR to establish Legal Aid clinics that provide legal services to indigents;
- The active KCA CLE Committee developed standards and sub committees (working groups) to interact with providers. The CLE Committee has proposed mandatory CLE to the KCA;
- The active *Praktikant* Committee worked with ABA/CEELI and OSCE to establish and operate a sustainable *Praktikant* program;
- The Ethics and Disciplinary Committee has developed changes to the Code of Professional Ethics of Lawyers, adopted by the KCA and is pursuing amendments to the Statute of the KCA to better regulate the Disciplinary process.

Despite the above activities, the KCA faces a number of challenges in improving member services. Professional standards for advocates are not generally adhered to, monitored or respected in practice. Therefore, disciplinary measures need to be enforced to gain public trust (see Factor 17). Further development of CLE sustainability must include: 1) participant fees for CLE programs, 2) maintenance of attendance records, 3) standards for minimum curriculum, and 4) self-funding. Improved communication between the Executive Board, the committees and the membership is also necessary.

Some respondents indicated frustration with the KCA: “I only give money to the Chamber; the Chamber doesn’t give me anything”. However, members generally rate the association’s success in promoting and protecting the legal profession as good.

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights.

Conclusion	Correlation: Negative
The Kosovo Chamber of Advocates [hereinafter “KCA”] is not supporting programs that educate and inform the public. International organizations are the exclusive providers of public interest and awareness programs.	

Analysis/Background:

Article 10 of the Law on Advocacy and Other Legal Assistance provides, in relevant part, that the KCA must keep track of events that affect protection of citizens’ rights. Article 4 (5) of the Statute of the KCA outlines more clearly the duty of the KCA to find ways to promote and protect the rights of citizens (see factor 24).

The international community in Kosovo has undertaken public awareness campaigns on legal rights and responsibilities including projects by the EU, EAR, Council of Europe, NCSC and the OSCE. Additionally, the Ombudsperson Institution in Kosovo (OIK) has an on-going campaign to

inform citizens of their rights. The programs include information on legal issues like human rights, criminal law, and family law. The KCA has not participated in these activities.

Factor 24: Role in Law Reform

Professional associations of lawyers are actively involved in the country's law reform process.

Conclusion	Correlation: Neutral
The Kosovo Chamber of Advocates [hereinafter "KCA"] is involved in Kosovo's law reform process, but its role has been limited.	

Analysis/Background:

Article 4 (6) of the Statute of the KCA provides that one of the special tasks of the KCA is, "To inform local competent bodies of different instances regarding the situation and measures that need to be undertaken for the advancement of advocacy and the rights of citizens and legal entities." This suggests that the KCA is obliged to participate in the law reform process. However, Kosovo's status as a UN protectorate poses unique problems for the KCA.

The KCA was active in proposing changes to the Law on Advocacy and Other Legal Assistance that resulted in the new Draft Law on Advocacy, which directly affects its members. Having input in the legislative process with the Kosovo Parliament has otherwise not been a priority. However, the KCA is now trying to set up a Legislative Advisory Commission for drafting new laws in Kosovo.

UNMIK is charged with establishing "An independent, impartial and multi-ethnic judiciary." Report of the Secretary-General on UNMIK, S/1999/779 (July 12, 1999), which is administered under UN Pillar I "Police and Justice." The KCA participates in the UNMIK Justice Sector Expert Consultative Group and has provided comments and recommendations to the Group, most recently on the independence of the judiciary.

Respondents expressed some frustration that the KCA was not allowed to participate more in the legal reform process and that the KCA was not requested to participate in legislative working groups. The only legislation on which advocates, as a group, have had significant impact is the Law on Advocacy and Other Legal Assistance and the Draft Law on Advocacy. Nonetheless, the KCA has sought to provide some input on other legislation and issues.

LIST OF ACRONYMS

ABA/CEELI	American Bar Association/Central European and Eurasian Law Initiative
CDRC	Criminal Defense Resource Centre
CEDAW	UN Convention on the Elimination of all Forms of Discrimination Against Women
DJA	Department of Judicial Affairs of Kosovo
EAR	European Agency for Reconstruction
KCA	Kosovo Chamber of Advocates
KLA	Kosovo Liberation Army
KLC	Kosovo Law Centre
KJI	KOSOVO JOINT INTERIM ADMINISTRATIVE STRUCTURE
KFOR	International security presence—Kosovo Force
OIK	Ombudsperson Institution in Kosovo
OSCE	Organization for Security and Co-operation in Europe
PDC	Partners for Democratic Change
PISG	Provisional Institutions for Self Governance
SFRY	Socialist Federal Republic of Yugoslavia
SRSG	Special Representative of the UN Secretary General
UNMIK	United Nations Mission in Kosovo
USAID	United States Agency for International Development